Supreme Court, U.S.
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OFFICE OF THE CLERK

In The

Supreme Court of the United States

PATRICIA BIBBS; EZIL BIBBS;
VANETTA KELSO; HAMPTON UNIVERSITY,

Petitioners,

v.

CITY OF LUBBOCK, TEXAS; KEN WALKER, Individually and in his Official Capacity as Police Chief; DAVID HOUSER, Individually and in his Official Capacity; KEITH JOBE, Individually and in his Official Capacity; BRIAN McNEILL, Individually and in his Official Capacity; ROGER HEARRON, Individually and in his Official Capacity; MIKE OVERLAND, Individually and in his Official Capacity,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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217 pp

QUESTION PRESENTED FOR REVIEW

Are vague racial descriptions, which make an entire class of people potential suspects, sufficient to form reasonable suspicion to justify a stop, detention, and arrest?

PARTIES TO THE PROCEEDINGS BELOW

Pursuant to Supreme Court Rule 29.6, the following listed persons were parties to the proceedings below and are identified in the caption of the case.

Petitioners: Patricia Bibbs,
Ezil Bibbs,
Vanetta Kelso, and
Hampton University

Respondents: City of Lubbock, Texas,
Mike Overland,
Ken Walker,
Keith Jobe,
David Houser,
Roger Hearron,
Brian McNeill, Individually, and in their Official Capacities

Hampton University has no parent company and there is no publicly held company which owns any stock in the University.

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Stephen C. Thaman, *Is America A Systematic Violator Of Human Rights In The Administration Of Criminal Justice?*, 44 St. Louis U. L.J. 999 (2000) 7

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit is unpublished but is reprinted at App. A, 1-3. The district court order and judgment regarding Officer Overland are reprinted at App. B, 4-19. The district court order and judgment regarding the City of Lubbock and the remaining officers are reprinted at App. C, 20-58. The Court of Appeals' order overruling Petitioners' Petition for Rehearing *En Banc* is reprinted at App. D, 59-61. The officers' summary judgment affidavits are reprinted at App. E, 62-95. The officers' police reports used as summary judgment evidence are reprinted at App. F, 96-156. The Petitioners' summary judgment affidavits are reprinted at App. G, 157-194.[1]

JURISDICTIONAL STATEMENT[2]

The Court of Appeals issued its opinion in these consolidated cases on November 28, 2000. Petitioners timely filed their Petition for Rehearing *En Banc* which was denied on January 9, 2001. This Court has jurisdiction to grant a writ of certiorari under 28 U.S.C. § 1254(1).

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[1] The Petitioners' affidavits were not part of the summary judgment evidence involving Officer Overland.

[2] The district court first entered judgment for Officer Overland. That judgment was severed and appealed. The judgment against the City and other officers was appealed later and assigned a separate appellate cause number. The Court of Appeals consolidated these cases for submission and issued one opinion for both cases.

STATUTES AND CONSTITUTIONAL PROVISIONS

The United States Constitutional provision involved in this case is the Fourth Amendment:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

Petitioners sued the City of Lubbock, Police Chief Ken Walker, Police Officers David Houser, Keith Jobe, Brian McNeill, Mike Overland, and Roger Hearron, in their official and individual capacities for violations of their Fourth Amendment rights under the United States Constitution, among other things. App. 7-17, 27-48. The district court had jurisdiction under 28 U.S.C. § 1331. The district court had supplemental jurisdiction over state law claims asserted by Petitioners under 28 U.S.C. § 1367. The main issue in the case was whether reasonable suspicion and probable cause existed to stop, detain, and arrest Petitioners for their alleged participation in what the officers surmised was a "pigeon drop scam" which reportedly had occurred in a Wal Mart parking lot in Lubbock.

Petitioner Patricia Bibbs is the head coach for the Hampton University Women's Basketball team and, at the time of these events, Petitioner Vanetta Kelso was an

assistant coach. Petitioner Ezil Bibbs is Patricia's husband. App. 5. In November 1998, they traveled to Lubbock for a basketball game against Texas Tech University. App. 158, 175, 185-186. The woman who reported the alleged scam, Elenita Hester, told police about a strange conversation she had with two black women in the Wal Mart parking lot, but she did not report losing any money. App. 102-103. She identified them as two black women, one "well-dressed, in a brown looking suit or a brown long coat." App. 103. Based on this description all three Petitioners were unlawfully detained, and ultimately arrested for having participated in the alleged scam. Petitioners were released hours after their arrests; no charges were ever filed against them; no evidence of a crime was ever found; and Hester subsequently confirmed that Petitioners were not the women she saw at Wal Mart. App. 121, 142.

Relying primarily upon the officers' summary judgment affidavits and their police reports, the district court granted the officers' and the City's motions for summary judgment which essentially asserted qualified immunity. App. 19, 57-58. Despite the material fact issues which called into question whether the officers had reasonable suspicion to order that Petitioners be stopped and then later arrested, the Court of Appeals, in an unpublished *per curiam* opinion, affirmed the district court's summary judgment. App. 1-3.

REASON FOR GRANTING WRIT

1. Reasonable suspicion cannot be based on a vague racial description because it violates the Fourth Amendment and *Terry v. Ohio*.

Public policy demands that this Court address the important issue of whether reasonable suspicion can be based on vague racial descriptions that make an entire group of people potential suspects.

This Court has recently granted certiorari and decided other cases involving the extent of reasonable suspicion under the Fourth Amendment and *Terry v. Ohio*, 392 U.S. 1 (1968). For example, in *Illinois v. Wardlow*, 528 U.S. 119 (2000), this Court granted certiorari to determine whether an initial stop was supported by reasonable suspicion. There, Wardlow was standing next to a building holding an opaque bag in an area known for high narcotics traffic. When a police caravan began to approach, officers claimed that Wardlow looked their way and then began to flee on foot. Once the officers cornered Wardlow, they conducted a stop and frisk. The officers discovered a gun in the bag and arrested Wardlow. *Id.*

The Illinois state trial court denied the motion to suppress, finding that the gun was discovered during a lawful stop and frisk. The Illinois state appellate court held that the officers lacked the reasonable suspicion necessary to make a *Terry* stop. The Illinois Supreme Court affirmed the appellate court's decision.

This Court granted certiorari and reversed. Essentially, this Court held that Wardlow's "unprovoked

flight" upon seeing the officers, coupled with his presence in a high crime area, gave officers sufficient reasonable suspicion for a *Terry* stop. *See also Florida v. J.L.*, 529 U.S. 266 (2000) (addressing existence of reasonable suspicion stemming from anonymous tip). This Court has also granted certiorari and heard oral argument in other Texas cases involving Fourth Amendment issues. *See Atwater v. City of Lago Vista*, 195 F.3d 242 (5th Cir. 1999), *cert. granted*, ___ U.S. ___, 120 S.Ct. 2715 (2000) (oral argument Dec. 6, 2000) (involving full custodial arrest from minor traffic violation); *see also Brown v. Texas*, 443 U.S. 47 (1979) (holding that officers lacked reasonable suspicion to detain citizen absent a belief that he was engaged in criminal conduct).

This case presents another Fourth Amendment issue: whether encountering citizens who are the same race as described by a complaining witness, two hours after the alleged incident, is sufficient to support reasonable suspicion for a *Terry* stop. From recent case law, it appears that officers and courts are struggling with what constitutes reasonable suspicion. Even worse, many officers are using race, and vague descriptions based thereon, to argue reasonable suspicion. For example, in *Washington v. Lambert*, 98 F.3d 1181 (9th Cir. 1996), two African-American males were followed into the parking garage of their hotel where they were stopped, ordered out of the car at gunpoint, handcuffed, and their car searched. *Id.* at 1183. The officers claimed that the men resembled a description of "two African-American males, aged 20-30, one tall (6' to 6'2") and 150-170 pounds, and the other short (5'5" to 5'7") and 170-190 pounds." *Id.* at 1183-84. The Court of Appeals for the Ninth Circuit noted that the description

was "exceedingly vague and general" and that it could be stretched to cover a significant percentage of African-American males engaging in any number of lawful activities. *Id.* at 1190-91. The court further noted that it was "extremely questionable" whether the tenuous general physical similarities between the plaintiffs and the real suspects would give rise to reasonable suspicion.[3] *Id.*; *see Morgan v. Woessner*, 997 F.2d 1244, 1254 (9th Cir. 1993), *cert. dismissed*, 510 U.S. 1033 (1994) (holding that seizure of African-American television commentator was not supported by reasonable suspicion where it was based on African-American drug suspect's statement that his accomplice "looked like him;" the description made all black men suspects); *United States v. Jones*, 619 F.2d 494, 497-98 (5th Cir. 1980) (holding that because the description was so general that it could have fit anybody, it did not support reasonable suspicion for *Terry* stop); *United States v. Rias*, 524 F.2d 118, 121 (5th Cir. 1975) (describing suspects as two black males driving a black or blue Chevrolet); *Faulk v. State*, 574 S.W.2d 764, 766 (Tex. Crim. App. 1978) (holding that Lubbock police did not have reasonable suspicion to stop suspect described as "young black male," because description was too general).

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[3] Whether the description was sufficient to merit reasonable suspicion was not raised by the parties. Therefore, the Court of Appeals did not decide that issue.

Hester's description made all well-dressed black women at or near the Wal Mart suspects. App. 103. This vague general description – totally dependent upon race – cannot amount to reasonable suspicion. One might ask if reasonable suspicion would have existed had Hester identified two white women, one well-dressed wearing a brown suit or coat? Would the officers have so hastily detained the first two white women they saw? Would such a description have given the officers the authority to subsequently arrest any two white women they found at Wal Mart? If not, then how can such a standard fairly be applied to Petitioners?

The significance of undertaking a review of this case is further demonstrated by the proliferation of racial profiling and the documented statistics establishing that people of color are being unlawfully stopped by police officers in disproportionate numbers. *See Lambert*, 98 F.3d at 1182, n. 1 & 1187 (documenting unlawful detentions in Los Angeles and recognizing that "the burden of aggressive and intrusive police action falls disproportionately on African-American, and sometimes Latino, males."); Stephen C. Thaman, *Is America A Systematic Violator Of Human Rights In The Administration Of Criminal Justice?*, 44 St. Louis U. L.J. 999, 1008 nn. 79-80 (2000) (citing articles, studies, and statistics concerning racial profiling). Racial profiling has become so common-place that both the President of the United States and the United States Attorney General are calling for a study of the practice. *See* Steve Miller, *Ashcroft Demands Profiling Study*, The Washington Times (Mar. 2, 2001). It cannot fairly be denied that African-Americans, throughout the entire country, are being stopped in record numbers and

subjected to unlawful searches and seizures because of their race. Brandon Garrett, Student Author, *Standing While Black: Distinguishing Lyons In Racial Profiling Cases*, 100 Colum. L. Rev. 1815, 1846 n. 5 (2000) (documenting litigation and investigations concerning racial profiling).

It is true that race was part of Hester's description and it can be argued that this case is not a classic example of racial profiling. App. 103. The problem here, however, is that race was the only basis of Hester's description and it is what the officers relied upon in deciding to detain Petitioners. App. 103-104. Respondents' appellate briefs stated that Petitioners were the only African-Americans at Wal Mart. *See* City's Appellee's Brief at 21. However, Petitioners were there more than two hours after the alleged incident occurred. App. 134, 158, 175, 186. While race might have been relevant in some part, the stop of Petitioners because they were the only African-Americans at the Wal Mart parking lot some two hours later was not supported by reasonable suspicion. *United States v. Montero-Camargo*, 208 F.3d 1122, 1134 nn. 21, 24-25 (9th Cir.), *cert. denied*, ___ U.S. ___, 121 S.Ct. 211 (2000) (holding that stops based solely on matches in racial description are not justified).

Indeed, the significance of vague race-based descriptions is demonstrated by looking at the facts of this case. To stop Petitioners, the officers had to have "particular and articulable facts, which, taken together with rational inferences from those facts, reasonably warrant[ed] an intrusion." *United States v. Micheletti*, 13 F.3d 838, 840 (5th Cir.) (*en banc*), *cert. denied*, 513 U.S. 829 (1994). They had to reasonably believe that a crime had occurred and that

Petitioners had committed it. *Terry*, 392 U.S. at 30. Overland knew that Hester reported that one black woman asked her if she had lost a purse, and another well-dressed black woman denied owning the lost purse, and that the three of them then discussed what to do with the lost purse.[4] App. 103. These conversations were not criminal. Overland also knew that when Jobe and Houser arrived at Wal Mart they saw two black women sitting in a van. App. 103. When Jobe asked them if they had called to report a lost purse, they said no. App. 104. Jobe saw Ezil get into the van, having just exited the Wal Mart. App. 104, 186. That is it. That is the evidence the officers argued established "particular and articulable facts, which, taken together with rational inferences from those facts, reasonably warrant[ed] an intrusion."

There was no evidence that a crime had been committed. Hester did not report that either of the black women did anything to her or tried to get any money from her. App. 103. The reality is the stop was ordered because Petitioners were the only blacks the officers saw when they arrived at Wal Mart, even though it was two hours later. App. 104. The likelihood is that any two black women who were at Wal Mart when the officers arrived would have been stopped. That is not reasonable suspicion. It is a violation of the Fourth Amendment.

This harsh reality is further reflected by the district court's judgment. In it, the court found that the stop was

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[4] What Hester reported to Jobe is at App. 102-103.

ordered only after Hester gave an eye-witness identification of the two women. The court erroneously found that Overland relied upon the eyewitness identification to detain Petitioners. App. 12-13. This is contrary to the undisputed evidence. The summary judgment evidence established that Hester did not make an identification of Vanetta until all Petitioners had already been unlawfully followed, detained, removed from their vehicle, and positioned so that the officers could drive Hester nearby to view them. App. 115-116. Petitioners had been detained so that Overland could transport Hester to the Holiday Inn where Petitioners were stopped. In transit, Overland essentially applauded Hester's efforts at crime prevention and referred to Petitioners as the "suspects." App. 116-117. When Hester arrived, Petitioners were surrounded by five police officers, four patrol cars, and one unmarked unit. App. 162-163. Thus, contrary to the district court's judgment, Hester's identification could not have been part of any reasonable suspicion used to determine whether to make the initial stop.

The officers tried to justify the unlawful detention by arguing that they developed probable cause to arrest Petitioners. The officers and the district court concluded that probable cause to arrest existed because of Hester's field identification of the already detained Vanetta (who allegedly resembled the well-dressed black woman), and Hester's statement that Patricia *could* have been the first black woman who approached her but, if so, she had changed clothes. App. 117-118. Hester never identified Ezil and never stated that a man was involved. Nevertheless, he was arrested. App. 102-103, 117-118.

The officers and the district court also justified the wrongful arrests by claiming that Petitioners failed to stop their van when the police lights were activated. App. 29, 127. Again, a review of the officers' own conflicting summary judgment evidence casts serious doubt on their claims. The evidence reflects that Overland asked that a traffic stop be initiated and "a short time later (five or ten seconds)" another officer, Brian McNeill, asked if the van stopped. App. 125. McNeill's report confirmed that the emergency lights had only been on for ten seconds when he was told that the van had not stopped. App. 125. Given this short time frame, the evidence did not undisputedly establish that Petitioners failed to stop. Moreover, the evidence showed that the van stopped three blocks after the lights were activated. App. 105.

The officers' own evidence also revealed at least these fact issues:

OFFICERS' AFFIDAVITS STATE	OFFICERS' REPORTS ESTABLISH
potential suspects matched the height, weight, race and clothing description given by the victim. App. 63, 86.	the only description given by Hester was two black women, one well-dressed wearing a brown coat or suit; there was never a height or weight description given. App. 103.
suspects were in a rented van. App. 63, 71.	none of the officers' reports reflected that this was reported before the order to stop was given. App. 104-105, 115.
Petitioners would not stop their van for the officers. App. 63, 71, 79.	van stopped within three blocks of when the officers activated their lights. App. 105, 108.
officers believed they were investigating a pigeon drop scam. App. 63, 77.	Hester never reported that the "suspects" tried to get any money from her and the alleged incident occurred two hours before any officer ever arrived at Wal Mart. App. 102-103.

All of these conflicts in the evidence further dilute the officers' efforts to deny the significant role race played in Petitioners' arrests, regardless of the officers' protests to the contrary.

In this case, it appears that the Court of Appeals did not review the evidence at all. Rather, the court simply

concluded that officers are protected by qualified immunity and that it would uphold the district court's decision for the reasons stated in that court's order. App. 2-3. This was wrong, not because the Court of Appeals did not give Petitioners the relief they requested, but because it is impossible to deny the presence of material fact issues even after the most cursory review of the evidence. The summary judgment standard of review requires courts to review the evidence to determine whether genuine issues of material fact exist. The standard further requires that all reasonable inferences be drawn in the non-movant's favor. The Court of Appeals should have followed this standard instead of summarily dismissing Petitioners' arguments and the evidence.

This case is about whether the judicial system will uphold the Constitution of the United States and protect all citizens from the unlawful disregard of their Fourth Amendment rights. The question of exceptional importance raised by this case concerns the protections afforded to citizens. As the Court of Appeals noted, and Petitioners do not dispute, "[p]olice officers enjoy qualified immunity. . . . " App. 2. However, despite the implicit acknowledgment of the officers' wrongful conduct, the Court of Appeals did nothing to protect these Petitioners or any other potential plaintiffs from such conduct. App. 2-3. As a result, Petitioners, three law-abiding citizens who committed no crime, were arrested and humiliated. App. 157-194. Even worse, Petitioner Vanetta, who was pregnant at the time, suffered indignities, not only from the officers but from emergency workers as well. App. 165-166.

This case is a reflection of an epidemic in this country's policing and judicial systems. Lately, these systems seem to be set up to protect police officers notwithstanding how they deprive citizens of their constitutional rights. While officers are entitled to qualified immunity, citizens are entitled to freedom from unlawful detentions and arrests. The qualified immunity doctrine is designed to *balance* these competing interests. It is not designed to give officers preferential treatment. The current judicial trend does little to encourage officers to respect the constitutional liberties of citizens. Rather, it is sending a message to officers that, even when they violate a citizen's constitutional rights, they can hide behind qualified immunity and find protection.

Courts should not turn a blind eye to these unlawful intrusions by crafting stringent protections for the wrongdoers all in the name of "qualified immunity." What has yet to occur is any similar judicially created blanket of protection for victims of these unlawful intrusions. Many believed that such protections already existed in the Fourth Amendment, 28 U.S.C. § 1983, or similar statutes. However, some courts, in their effort to protect police officers, have forgotten about the rights of citizens that should be balanced, not disregarded, against those seeking qualified immunity. The issue concerning the role a person's race plays in the reasonable suspicion analysis is one of exceptional importance as race-based detentions, seizures, and arrests are on the rise and are receiving critical national attention.[5] Given the number of citizens

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[5] *See Wardlow*, 528 U.S. 119, nn. 7-9 (Stevens, J., concurring in part and dissenting in part) (citing articles and studies

who are experiencing these unlawful intrusions, this Court should grant certiorari.

Furthermore, it is clear that the Court of Appeals did not evaluate the issues in this case under the summary judgment standard because material conflicts exist in the officers' own evidence, which should have precluded summary judgment. Thus, the question becomes whether in reviewing district court decisions, appellate courts are free to disregard well-settled review standards and opt for their own method of review. The Court of Appeals' failure to review this case in accordance with long-standing precedent governing summary judgment appeals is inconsistent with this Court's precedent setting forth the applicable standard. *Matsushita Elec. Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

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documenting issues regarding race-based incidents between citizens of color and police officers).

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-11011

PATRICIA BIBBS; EZIL BIBBS;
HAMPTON UNIVERSITY; VANETTA KELSO,

Plaintiffs-Appellants

versus

CITY OF LUBBOCK, TX; ET AL,

Defendants,

MIKE OVERLAND, Individually
and in his official capacity,

Defendant-Appellee

No. 99-11379

PATRICIA BIBBS; EZIL BIBBS;
HAMPTON UNIVERSITY; VANETTA KELSO,

Plaintiffs-Appellants,

versus

CITY OF LUBBOCK, TEXAS; ET AL,

Defendants,

CITY OF LUBBOCK, TEXAS;
KEN WALKER, Individually and in his
official capacity as Police Chief;
DAVID HOUSER, Individually and in his official capacity;

KEITH JOBE, Individually and in his official capacity; McNEILL, Individually and in his official capacity; OFFICER HEARRON, Individually and in his official capacity,

Defendants-Appellees.

Appeal from the United States
District Court For the
Northern District of Texas
(5:99-CV-193-C)

(Filed Nov. 28, 2000)

Before HIGGINBOTHAM and DeMOSS, Circuit Judges, and KENT*, District Judge.

PER CURIAM:**

This case arises from an unfortunate incident in which members of the Lubbock Police Department arrested persons who proved to be innocent. With the benefit of briefs and able oral argument, we are persuaded that the judgment entered below should be affirmed for essentially the reasons stated by the trial court.

We add only the observation that police officers enjoy qualified immunity from liability for money damages. This legal protection reflects the fundamental principle

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* District Judge of the Southern District of Texas, sitting by designation.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

that the officers should not be mulcted in damages for law enforcement decisions a reasonable police officer might make given the facts as they then appeared to be – even though later their decision proves to have been a mistake. Our recognition of this protection does not imply that we approve of the officers' decisions. Mistakes were made and acknowledged.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

PATRICIA BIBBS, et al., Plaintiffs,	)	Civil Action No. 5:99-CV-193-C
v.	)	
CITY OF LUBBOCK, et al., Defendants.	)	

ORDER

(Filed Aug. 25, 1999)

On this day the Court considered Defendant Mike Overland ("Overland")'s Motion for Summary Judgment on Qualified Immunity, filed August 4, 1999. Pursuant to Local Rule 7.1(e), Plaintiffs had until August 24, 1999, to file a response to Overland's motion. As of this date, Plaintiffs have not filed a response to Overland's motion, the time for filing a response to the motion has expired, and the Court therefore considers Overland's motion without a response from Plaintiffs.

Although a federal court may not enter a "default" summary judgment, *Hibernia Nat'l Bank v. Administracion Central Sociedad Anonima,* 776 F.2d 1277, 1279 (5th Cir. 1985), the failure of a non-movant to respond to a proper motion for summary judgment allows the court to accept the movant's evidence as undisputed. *Eversley v. MBank Dallas,* 843 F.2d 172, 174 (5th Cir. 1988).

"Summary judgment is not a 'disfavored procedural shortcut, but rather an integral part of the Federal Rules as a whole, which are designed to secure the just, speedy and inexpensive determination of every action.' " *Ragas v. Tennessee Gas Pipeline Co.*, 136 F.3d 455, 458 (5th Cir. 1998) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986)). Furthermore, " 'Rule 56 does not impose upon the district court a duty to sift through the record in search of evidence to support a party's opposition to summary judgment.' " *Ragas*, 136 F.3d at 458 (quoting *Skotak v. Tenneco Resins, Inc.*, 953 F.2d 909, 915-16 & n.7 (5th Cir. 1992)). After considering all relevant arguments and evidence, the Court **GRANTS** Overland's Motion for Summary Judgment.

I.
BACKGROUND

This is a civil rights action filed by Plaintiff Hampton University, two coaches of its women's basketball team, and the husband of one of the coaches. Plaintiffs claim that officers of the Lubbock Police Department, including Overland, falsely arrested them based in part upon the misidentification of an eyewitness victim. In this lawsuit, Plaintiffs allege claims against the City, its police chief, several of the police department's officers, and unknown employees of the Emergency Medical Services at University Medical Center.

Although the actions upon which Plaintiffs allege liability all occurred in Lubbock, Texas, Plaintiffs filed this action in the Wichita Falls Division of the United States District Court for the Northern District of Texas. On June 21, 1999, Chief Judge Jerry Buchmeyer held a

hearing on Defendants' motion for change of venue to Lubbock, Texas. That same day, Judge Buchmeyer granted Defendants' motion, and the case was transferred to the Lubbock Division of the Northern District.

The Court granted in part and denied in part Overland's motion to dismiss Plaintiffs' First Amended Original Complaint on July 6, 1999. The order on that motion to dismiss disposed of Plaintiffs' claims against Overland under Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d ("Title VI"), together with all of Plaintiffs' state law intentional tort claims alleged against Overland in his official capacity. That order also dismissed Plaintiffs' Eighth Amendment claims against Overland, in addition to their Fourth Amendment claim for inadequate medical care.

After Plaintiffs filed their Second Amended Original Complaint, the Court on August 13, 1999, struck *sua sponte* certain claims in Plaintiffs' Second Amended Original Complaint against Overland which the Court had dismissed in its previous order. Particularly, the Court struck Plaintiffs' Eighth Amendment, Title VI, and state law tort claims against Overland in his official capacity.

II.
SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," when viewed in the light most favorable to the non-movant, "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment

as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50 (1986). A dispute about a material fact is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Id.* at 248. In making its determination, the court must draw all justifiable inferences in favor of the non-moving party. *Id.* at 255. Once the moving party has initially shown "that there is an absence of evidence to support the non-moving party's cause," *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986), the non-movant must come forward, after adequate time for discovery, with "specific facts" showing a genuine factual issue for trial. FED.R.CIV.P. 56(e); *Matsushita Elec. Indus. Corp. v. Zenith Radio*, 475 U.S. 574, 587 (1986). Conclusory allegations and denials, speculation, improbable inferences, unsubstantiated assertions, and legalistic argumentation are not an adequate substitute for specific facts showing that there is a genuine issue for trial. *Douglass v. United Servs. Auto. Assn*, 79 F.3d 1415, 1429 (5th Cir. 1996)(en banc); *SEC v. Recile*, 10 F.3d 1093, 1097 (5th Cir. 1993).

III.
ANALYSIS

Plaintiffs allege causes of action for deprivations of their Fourth and Fourteenth Amendment rights under 42 U.S.C. § 1983. They also allege a claim of discrimination under 42 U.S.C. §§ 1981(a) and 1986, together with a claim for civil conspiracy under § 1983 and 42 U.S.C. § 1985, and a claim for attorneys' fees under 42 U.S.C. § 1988. Plaintiffs also allege various state law tort claims against Overland. The Court will address Plaintiffs' claims against Overland *seriatim*.

A. 42 U.S.C. § 1983 Claims

1. Detention and Arrest Claims

Plaintiffs allege that Overland violated their rights under the Fourth and Fourteenth Amendments to the United States Constitution by subjecting them to unreasonable searches, seizures, and unlawful arrest. They allege these claims under 42 U.S.C. § 1983. The federal government created the ability for citizens to bring civil suits against those who violate their rights through 42 U.S.C. § 1983. Originally created in 1871 as the Ku Klux Klan Act, the statute was codified and amended and reads in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . causes to be subjected any citizen of the United States . . . the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law. . . .

In response to Plaintiffs' claims, Overland pleads the defense of qualified immunity. The question of whether qualified immunity will protect an official is one of law for the court to decide. *Hunter v. Bryant*, 502 U.S. 224, 228 (1991). Qualified immunity is a defense to both liability and suit. *Heitschmidt v. City of Houston*, 161 F.3d 834, 840 (5th Cir. 1998). Qualified immunity protects a government official from liability if a reasonably competent official would not have known that his actions violated clearly established law. *Anderson v. Creighton*, 483 U.S. 635, 639 (1987). The objective reasonableness of the officer's conduct is measured with reference to the law as it

existed at the time of the conduct in question. *Harper v. Harris Co., Tex.*, 21 F.3d 597, 600 (5th Cir. 1994). Therefore, the right the official is alleged to have violated must have been clearly established at the time of the occurrence. *Anderson*, 483 U.S. at 640. The contours of the right must be sufficiently clear so that a reasonable official would understand that what he is doing violates that right. *Id.* If, upon viewing the evidence in the light most favorable to the non-movant, reasonable public officials could differ on the lawfulness of the defendant's actions, the defendant is entitled to qualified immunity. *Harper*, 21 F.3d at 600 (citing *Pfannstiel v. City of Marion*, 918 F.2d 1178, 1183 (5th Cir. 1990)).

The examination of a claim of qualified immunity is a two-step process. The first inquiry is whether the plaintiff has alleged a violation of a clearly established constitutional right. *Siegert v. Gilley*, 500 U.S. 226, 231-32 (1991). The next step is to determine the standard by which to judge the reasonableness of the officer's behavior. *Id.*

Throughout Plaintiffs' complaint, they have alleged that Overland and the other defendants acted with an improper motive, specifically a racial bias. However, the defense of qualified immunity may not be rebutted by evidence that a governmental official's conduct was malicious or otherwise improperly motivated. Evidence concerning a defendant's subjective intent is simply irrelevant to a qualified immunity defense, although it may be an essential component of a plaintiff's affirmative case. *Crawford-El v. Britton*, 523 U.S. 574, ___, [sic] 118 S.Ct. 1584, 1592 (1998).

Plaintiffs contend that Overland's conduct is in violation of their Fourth and Fourteenth Amendment rights to be free from unreasonable searches and seizures and unlawful arrest. However, it should be noted that Plaintiffs' claims against Overland for illegal arrest and detention should properly be considered under the Fourth Amendment, which is the more specific constitutional right implicated by their allegations. *Blackwell v. Barton*, 34 F.3d 298, 302 (5th Cir. 1994) (extending Supreme Court's holding in *Graham v. Connor*, 490 U.S. 386 (1989) that claims of searches, seizures and arrests should be brought under Fourth Amendment-Fifth Circuit extended *Graham* to be "equally applicable to . . . [a] claim for illegal arrest based on mistaken identity"). Plaintiffs are correct in asserting a right to be free from unreasonable search, seizure and arrest. Therefore, the Court's task is to weigh Overland's qualified immunity defense in light of these Fourth Amendment rights.

Even if a peace officer violates an arrestee's constitutional rights, he will still be entitled to qualified immunity in a § 1983 action brought by the arrestee for illegal arrest and detention based upon mistaken identity, if the officer's conduct was objectively reasonable. *Blackwell*, 34 F.3d at 302-03 (citing *Pfannstiel*, 918 F.2d at 1183). *See also Sanchez v. Swyden*, 139 F.3d 464, 467 (5th Cir.), *cert. denied*, ___ U.S. ___, 119 S. Ct. 170 (1998) (citing *Pfannstiel*, 918 F.2d at 1183); *Mouille v. City of Liveoak*, 918 F.2d 548, 551 (5th Cir. 1990). The clearly established law at the time of Overland's conduct provided that an arrest, with or without a warrant, must be based upon probable cause. *United States v. Raborn*, 872 F.2d 589, 593 (5th Cir. 1989). Probable cause exists when the facts available at the time of the

arrest would support a reasonable person's belief that an offense has been, or is being, committed and that the individual arrested is the guilty party. *Id.* Although applying an objective standard, the Court may consider Overland's experience and expertise in evaluating the reasonableness of his conduct. *Id.*

The determination of probable cause rests upon the collective knowledge of the law enforcement authorities involved, and not upon individual knowledge. *United States v. Walker,* 960 F.2d 409. Thus, Overland did not have to have personal knowledge of all the facts constituting probable cause; however, those facts can rest upon the collective knowledge of the police when there is communication between them. *Id.* at 416 (quoting *United States v. Delosantos,* 810 F.2d 1326, 1336 (5th Cir. 1987)). Overland's summary judgment evidence shows that there was communication between himself and the other participating officers before Plaintiffs' arrests. Overland was entitled to rely upon information obtained by the other involved officers in order to make his determination on probable cause.

Furthermore, the Fourth Amendment is not violated by an arrest based upon probable cause, even if the wrong person is arrested, if the arresting officer had a reasonable, good faith belief that he was arresting the correct person. *Blackwell,* 34 F.3d at 303 (citing *Hill v. California,* 401 U.S. 797 (1971)). Such is the case here. Overland's undisputed summary judgment evidence, which is confirmed by Plaintiffs' pleadings, establishes that the eyewitness victim, Elenita Hester, identified Plaintiff Vanetta Kelso. In *Hill,* police officers had probable cause to arrest Hill, but did not have an arrest or

search warrant. The officers arrived at Hill's residence, where they were confronted by a man who fit the description of Hill but who identified himself as Miller and produced identification in that name. The officers, believing that Miller was Hill, searched the residence; Hill was ultimately found guilty of robbery based on the fruits of that search. The Supreme Court upheld the search, concluding that the officers had probable cause to arrest Hill and a reasonable, good faith belief that Miller was Hill. Therefore, the arrest of Miller was valid (even though Miller was not Hill), and the search of the residence incident to that arrest, under then-current law, was proper. *Hill*, 401 U.S. at 802-04.

Plaintiffs complain that Overland and the other defendants took too long to establish their innocence. In their complaints, they mention several times that they protested their innocence, which should have been enough to justify their release from detention. However, in *Sanchez*, the plaintiff was held for twenty-six hours protesting his innocence. 139 F.3d at 467. Furthermore, the law enforcement officials had in their possession exculpatory information, including a tattoo and fingerprints. *Id.* The Fifth Circuit held that failure to apply this information to correctly ascertain Sanchez' identity for twenty-six hours did not deprive the defendant officers of qualified immunity. Indeed, the court held there was no constitutional injury as a matter of law. *Id.* at 469.

Such is the case here. Overland made the decision to have Plaintiffs stopped by the patrol officers. This decision was only made after Overland and the other police

officers received an independent, eyewitness identification from the victim. At that point, Overland had probable cause to detain and arrest Plaintiffs. Although it was truly unfortunate that Plaintiffs were not the guilty parties and were mistakenly arrested, "[t]he Constitution does not guarantee that only the guilty will be arrested. If it did, § 1983 would provide a cause of action for every defendant acquitted – indeed, for every suspect released." *Baker v. McCollan,* 443 U.S. 137, 145 (1979).

However, assuming *arguendo* that Overland lacked probable cause to stop and later arrest Plaintiffs, he would still be entitled to qualified immunity because his conduct was objectively reasonable. *See Wren v. Towe,* 130 F.3d 1154, 1159 (5th Cir. 1997), *cert. denied,* ___ U.S. ___, 119 S. Ct. 51 (1998); *Bigford v. Taylor,* 896 F.2d 972, 975 (5th Cir. 1990). In *Wren,* the Fifth Circuit held that "[t]he key point here is not whether Norris and Towe had probable cause to seize the truck, and the reliance of the district court on this point is in error . . . . [L]aw enforcement officers are only human, and inevitably, accidents and mistakes of judgment will happen, and these mistakes alone do not open officers to personal liability." *Id.* at 1159. Thus, even if Overland's reliance upon the eyewitness victim eviscerated probable cause to detain and arrest Plaintiffs, Overland would still be entitled to qualified immunity because he acted in an objectively reasonable manner and in good faith.

Furthermore, Overland cannot be liable under § 1983 for mere negligence in his actions. The Fifth Circuit in *Herrera v. Millsap,* held that negligence in a mistaken arrest situation will not yield liability under § 1983. 862

F.2d 1157, 1160 (5th Cir. 1989). Therefore, even if Overland's actions were negligent (which they were not), he would be shielded from liability under § 1983.

2. Inadequate Medical Care Claim

In their Second Amended Original Complaint, Plaintiffs allege a claim for inadequate medical care on behalf of Plaintiff Vanetta Kelso, a pregnant female. As the en banc Fifth Circuit held in *Hare v. City of Corinth, Miss.*, 74 F.3d 633, 650 (5th Cir. 1996), the right to adequate medical care for pretrial detainees flows from the Fourteenth Amendment to the Constitution. However, an official's liability for inadequate medical care under the Fourteenth Amendment cannot attach unless the official had subjective knowledge of substantial risk of serious harm to the pretrial detainee but responded with deliberate indifference to that risk. *Id.* The summary judgment evidence proves that Overland did not know that Plaintiff Vanetta Kelso required medical attention, and was not present to observe the events regarding Plaintiff's medical claim as alleged by Plaintiffs. Overland was en route to return Ms. Hester home after her on-site identification when these events occurred. Thus, there are no pleadings and no evidence which show any subjective knowledge by Overland of a substantial risk of serious harm. Thus, Overland is entitled to summary judgment on Plaintiffs' inadequate medical care claims.

B. 42 U.S.C. § 1981 Claim

To succeed on a claim of intentional discrimination under 42 U.S.C. § 1981, a plaintiff must first prove a prima facie case of discrimination. *Harrington v. Harris*, 118 F.3d 359, 367 (5th Cir.), *cert. denied*, ___ U.S. ___, 118 S. Ct. 603 (1997). Because there is no evidence proving racial discrimination attributable to Overland, Plaintiffs' § 1981 claim must fail.

C. Civil Conspiracy Claims

In three subsections, 42 U.S.C. §1985 creates causes of action for three kinds of conspiracies: (1) to threaten, intimidate, or injure a federal officer or prevent him from discharging his duties; (2) to interfere by various means in federal judicial proceedings; and (3) to deprive a person or class of persons of the equal protection of law or to interfere by various means in federal elections. As Plaintiffs' complaint under § 1985 does not remotely implicate subsections (1) or (2), presumably they rely upon subsection (3). However, essential to a § 1985(3) claim is the averment that a conspiracy was motivated by racial animus. *Word of Faith World Outreach Ctr. Church, Inc. v. Sawyer*, 90 F.3d 118, 124 (5th Cir. 1996); *Green v. State Bar of Texas*, 27 F.3d 1083, 1088 N. 8 (5th Cir. 1994). Because neither Plaintiffs' complaints nor the summary judgment evidence show any proof of racial animus attributable to Overland, they fail to state a constitutional violation under 42 U.S.C. § 1985(3), and therefore summary judgment is granted as to this claim.

Similarly, Plaintiffs cannot state a constitutional deprivation via conspiracy under § 1983. First, Plaintiffs have failed to allege a bona fide conspiracy. Bare conclusory allegations of conspiracy are insufficient to state a § 1983 conspiracy claim. To succeed, a plaintiff must plead specific facts that, if proved, would establish the elements of the claim. *Marts v. Hines*, 68 F.3d 134, 136 (5th Cir. 1995). The plaintiff must plead facts showing that the defendants *agreed* to commit an act made illegal by § 1983 or § 1985. *Arsenaux v. Roberts*, 726 F.2d 1022, 1024 (5th Cir. 1982), citing *Crow v. Lucas*, 595 F.2d 985, 993 (5th Cir. 1979). Because there is an absence of any evidence tending to prove a conspiracy under § 1985, Plaintiffs' claims under that statute are dismissed as well.

D. 42 U.S.C. § 1986 Claims

42 U.S.C. § 1986 allows plaintiffs to bring a cause of action for "failure to prevent a civil conspiracy under § 1985. However, the complete absence of evidence proving Overland's violation of 42 U.S.C. § 1986 compels summary judgment to be entered in his favor. *Whitehurst v. Wright*, 592 F.2d 834, 839 (5th Cir. 1979).

E. 42 U.S.C. § 1988 Claim

Plaintiffs make a claim for attorneys' fees as potentially prevailing parties under 42 U.S.C. §§ 1981, 1983, and 1985. However, as the Court has entered summary judgment against them as to these claims, Plaintiffs' § 1988 claim fails as well.

F. State Law Claims

Plaintiffs have failed either to plead or prove any personal involvement by Overland to make him liable for their state law claims of intentional infliction of emotional distress, tortious interference with contract, libel, slander, or defamation. Accordingly, summary judgment is granted in Overland's favor as to those claims.

As to Plaintiffs' claims of false arrest and imprisonment, "Texas law provides for immunity from suit for government officials for matters arising from the performance of their discretionary duties, as long as they are acting in good faith and within the scope of their authority." *Wren*, 130 F.3d at 1160 (citing *City of Lancaster v. Chambers*, 883 S.W.2d 650, 653 (Tex. 1994)). As previously stated, Overland's actions were in good faith, and his actions were obviously within his scope of authority. Furthermore, Plaintiffs have not proved that Overland's actions were unreasonable or unnecessary. Therefore, Overland is immune from suit as to Plaintiffs' claims of false arrest and imprisonment as well.

IV.
CONCLUSION

Because Overland is entitled to immunity from suit under state and federal law, his Motion for Summary Judgment is **GRANTED**. All relief not expressly granted is denied.

SO ORDERED.

Dated August 25, 1999.

/s/ Sam R. Cummings
SAM R. CUMMINGS
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

PATRICIA BIBBS, et al., Plaintiffs,	)	
v.	)	Civil Action No. 5:99-CV-193-C
CITY OF LUBBOCK, et al., Defendants.	)	

JUDGMENT

(Filed Aug. 25, 1999)

On this date the Court has entered an order granting Defendant Overland's Motion for Summary Judgment. The following judgment is, therefore, entered:

IT IS ORDERED, ADJUDGED, AND DECREED that Plaintiffs, PATRICIA BIBBS, EZIL BIBBS, VANETTA KELSO, and HAMPTON UNIVERSITY, take nothing as against Defendant MIKE OVERLAND. This judgment shall be a final judgment as to all claims alleged against such Defendant, pursuant to Fed. R. Civ. P. 54(b).

Dated August 25, 1999.

/s/ Sam R. Cummings
SAM R. CUMMINGS
UNITED STATES
DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

PATRICIA BIBBS, et al., Plaintiffs, V. CITY OF LUBBOCK, et al., Defendants.	)	CIVIL ACTION NO. 5:99-CV-193-C

ORDER

(Filed Dec. 10, 1999)

Plaintiffs, Patricia Bibbs, Ezil Bibbs, Vanetta Kelso, and Hampton University, filed suit on April 19, 1999, alleging that the individual Plaintiffs were falsely arrested in Lubbock, Texas, on or about November 16, 1999, based in part upon the alleged misidentification by an eyewitness victim and racial motivation on the part of the police officers involved. Plaintiffs sued the City of Lubbock; Ken Walker, individually and in his official capacity as Police Chief; Lubbock Police Officers David Houser, Keith Jobe, Brian McNeill, R. Hearron, and Mike Overland, each individually and in their official capacities; and Unknown Employees of the Emergency Medical Services at University Medical Center, in their individual capacities.

Plaintiffs' claims were brought under the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution, 42 U.S.C. §§ 1981, 1983, 1985, and 1988, Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, and various state law tort claims, including

intentional infliction of emotional distress, tortious interference with a contract, false arrest and false imprisonment, and libel, slander and defamation.

On July 6, 1999, Plaintiffs' Title VI, Fourth Amendment claims as to inadequate medical care, Eighth Amendment claims, and state law tort claims against the individual Defendants in their official capacities were dismissed. Pursuant to Court Order, Plaintiffs filed their Second Amended Original Complaint on August 11, 1999, which complaint again alleged those claims which had previously been dismissed on July 6, 1999. Thereafter, the Court entered its Order on August 13, 1999, striking those claims which had previously been dismissed.

Plaintiffs' claims against the Defendants designated as "Unknown Employees of the Emergency Medical Services at UMC, all in their individual capacities," were dismissed on September 8, 1999, because Plaintiffs had failed to file a proof of service as to those Defendants or to otherwise respond to the Court's Order of August 19, 1999.

Defendant Mike Overland filed a motion for summary judgment on August 4, 1999, claiming he was entitled to qualified immunity. Defendant Overland's motion was granted on August 25.

PENDING MOTIONS FOR SUMMARY JUDGMENT

The Court has now considered the Motions for Summary Judgment filed on September 7, 1999, by Defendants David Houser, Keith Jobe, Brian McNeill, and

Roger Hearron, together with Plaintiffs' responses thereto, and supporting summary judgment evidence submitted by all parties. These Defendants claim that they are entitled to qualified immunity.

The Court has also considered the Motions for Summary Judgment filed by Defendants Ken Walker on September 7, 1999, and the City of Lubbock on September 15, 1999, together with Plaintiffs' responses thereto, and supporting summary judgment evidence.

SUMMARY JUDGMENT STANDARD

The Fifth Circuit has summarized the summary judgment standard in *Burge v. Parish of St. Tammany,* 187 F.3d 452 (5th Cir. 1999), as:

> The party seeking summary judgment has the initial responsibility of informing the court of the basis for its motion, and identifying those parts of the record that it believes demonstrate the absence of a genuine issue of material fact. If the moving party carries its initial burden, the burden then falls upon the nonmoving party to demonstrate the existence of a genuine issue of material fact. "This showing requires more than 'some metaphysical doubt as to the material facts.' " While the party opposing the motion may use proof filed by the movant to satisfy its burden, " 'only evidence – not argument, not facts in the complaint – will satisfy the burden.

Burge, 187 F.3d at 465 [internal citations omitted].

QUALIFIED IMMUNITY

> The first inquiry in the examination of a defendant's claim of qualified immunity is whether the plaintiff alleged the violation of a clearly established constitutional right. The second inquiry is to determine whether the defendant is entitled to qualified immunity. State officials are entitled to qualified immunity unless they violate a constitutional right that was clearly established at the time of their conduct.

Blackwell v. Barton, 34 F.3d 298, 301-02 (5th Cir. 1994) [internal citations omitted].

BACKGROUND

According to police records, on November 16, 1998, the Lubbock Police Department received a report of a possible "pigeon drop" scam at the Wal-Mart store located on South Loop 289 in Lubbock, Texas. Defendant Jobe was dispatched to the home of Ms. Hester, whose husband had made the report to the police. Ms. Hester related to Defendant Jobe that she had been at the Wal-Mart store on South Loop 289 and had been approached by a black female who asked her if she had lost her purse. The black female said that the purse had been found by Hester's car. Hester and the black female looked inside the purse and it contained a large stack of money and a note. Another black female was walking around in the parking lot. Hester described the black female as being well dressed in a brown suit or long coat. The first black female asked the second black female if the purse belonged to her. Hester suggested turning the purse in,

but the other females said no because Wal-Mart would keep the money. Hester got nervous and left.

Hester went home, and her husband called the police. After interviewing Ms. Hester and receiving a description of the two black women, Defendant Jobe went to Wal-Mart.

According to Plaintiffs, they arrived at Wal-Mart at approximately 4:00 p.m., and all three went into the store to shop. Patricia and Ezil Bibbs completed their shopping first and Vanetta Kelso gave the keys to the van to Patricia. When Kelso completed her shopping, she exited the store and passed Ezil Bibbs as he was returning to the store. Kelso states that she decided to drive the van closer to the front doors and started to park in the fire lane to wait on Ezil; however, Patricia advised that they better not park there. Kelso ended up parking in the same row they had been in before, but in a different spot. While waiting for Ezil to exit the store, Kelso and Patricia noticed a police unit drive down the row in front of them. The police car came down the row where they were located and parked slightly beyond their van.

Defendant Jobe states that he contacted the detective division of the Lubbock Police Department when he arrived at the Wal-Mart parking lot. He spoke to Detective Overland. Overland told Jobe that, based upon the report given by Ms. Hester, she had been the target of a pigeon drop scam. Defendant Jobe then scouted the parking lot and noticed the black females sitting in a white van. He approached the van and asked the ladies if either

of them had lost a purse. Jobe then concluded that Plaintiffs Vanetta Kelso and Patricia Bibbs were possible suspects. After Jobe made his identification, he drove to another part of the parking lot, keeping the van in sight. Ezil Bibbs then joined Plaintiffs Kelso and Patricia Bibbs in the van.

Jobe called for a backup, and Defendant Houser arrived. Both officers maintained communication with Detective Overland. When Plaintiffs departed the parking lot, Detective Overland instructed Jobe and Houser to stop Plaintiffs and obtain identification. Plaintiffs were driving a rented van. The officers activated both visible and audible signals; however, Plaintiffs did not stop until they reached the Holiday Inn parking lot, approximately one mile from Wal-Mart.

Defendant Houser made the initial contact with Plaintiff Kelso and obtained the drivers' licenses for all three Plaintiffs. Plaintiff would not roll the window down a sufficient distance to converse.

Plaintiffs were detained for investigatory purposes. Their drivers' licenses were checked, and although Plaintiffs Vanetta Kelso and Patricia Bibbs were women's basketball coaches at Hampton University, in Hampton, Virginia, Vanetta Kelso produced a Tennessee driver's license and Patricia Bibbs and Ezil Bibbs produced Louisiana drivers' licenses. While the drivers' licenses were being checked, Detective Overland arrived at the Holiday Inn parking lot with Ms. Hester, the victim of the attempted "pigeon drop" scam. Ms. Hester made a positive identification of Vanetta Kelso as being one of the black women involved in the attempted scam and said

that Patricia Bibbs could possibly be the other woman, except for her clothes.

During the investigation, Plaintiffs became uncooperative. While they were still in the van, Ezil informed the police they would not answer any further questions. Kelso started writing down the names of the officers and the tag numbers of the police units. Defendant Jobe questioned Kelso about her Tennessee drivers' license and said that it looked fishy. According to Kelso, she told Jobe that her "license was state issued and if [her] license did look 'fishy' that he would need to take that up with the Governor of Tennessee because they were state issued licenses."

Detective Overland, believing he had probable cause, made the decision to arrest the Plaintiffs based upon the positive identification of Vanetta Kelso and possible identification of Patricia Bibbs. Detective Overland instructed Defendant Houser to effect the arrests. Detective Overland's decision to effect the arrests was made approximately 30 minutes after the initial stop.

"PIGEON DROP" SCAM

"The term 'Pigeon Dropping' has been defined to mean the following: 'An old and commonly used confidence game where two con-men work together to defraud a victim of money or property . . . . There are many variations of the game.' " *Johnson v. State*, 676 S.W.2d 416, 417 (Tex. Crim. App. 1984) *(en banc)*.

In *Dokes v. Lockhart*, 992 F.2d 833 (8th Cir. 1993), *cert. denied*, 513 U.S. 968 (1994), the habeas petitioner had been

convicted of theft, robbery, and aggravated robbery in state court. The case involved an alleged "pigeon drop" scam, and the Eighth Circuit described the "pigeon drop" scam as one requiring the participation of at least two con-artists.

> One person must act the part of the gullible simpleton who recently came upon a large sum of money, while the other must play the role of the opportunistic passerby. The simpleton engages the victim in conversation about how she might safeguard her newly-acquired wealth. The opportunistic passerby then casually walks by, leading the victim to believe that the two con-artists have never met before. The passerby becomes drawn into the conversation and convinces the victim to join him in defrauding the simpleton of her wealth. The passerby urges the victim to "front" some of his own money in order to gain the trust of the simpleton, but in the end, the victim is the one who finds himself defrauded. The success of few crimes depends as strongly on the active participation of at least two individuals as does the success of the pigeon drop scam.

Id. at 836.

ILLEGAL STOP, DETENTION, AND ARREST

A civil rights claim under 42 U.S.C. § 1983 for illegal arrest and detention is to be considered under the Fourth Amendment. *Blackwell,* 34 F.3d at 302. The *Blackwell court,* relying on the Supreme Court's Fourth Amendment's "reasonableness" standard as applied to allegations of excessive force during an arrest, investigatory stop, or

other seizure (*see Graham v. Connor,* 490 U.S. 386 (1989)), found that the reasonableness standard is equally applicable to claims for illegal arrest based on mistaken identity. *Id.*

The individual Plaintiffs have asserted a clearly established constitutional right "to be free from unreasonable seizure, or not to be arrested absent probable cause." *See Blackwell, supra.* Therefore, this Court is required to weigh Defendants' qualified immunity defense in light of Plaintiffs' Fourth Amendment right.

The individual Plaintiffs claim that they were illegally stopped, detained, and arrested. These issues will be addressed separately.

(1) Illegal Stop

The summary judgment evidence shows that:

(a) The police had received a report of a possible "pigeon drop" scam at the Wal-Mart located on South Loop 289.

(b) The victim reported that two black women were involved in the attempted scam, and described the two black women.

(c) One woman was described as being dressed in a brown or dark suit or long coat.

(d) Defendant Jobe was dispatched to Ms. Hester's home, and after interviewing Ms. Hester and obtaining an identification of the two black women, Jobe went to the Wal-Mart parking lot where, based upon the descriptions given by the victim, he identified Vanetta Kelso and

Patricia Bibbs as possible suspects in the alleged "pigeon drop" scam.

(e) After making an identification, Jobe called for a backup and Defendant Houser was dispatched to Wal-Mart.

(f) After Defendant Jobe identified Vanetta Kelso and Patricia Bibbs, they were joined by Ezil Bibbs and the three drove out of the Wal-Mart parking lot.

(g) Ezil Bibbs stated in his sworn affidavit that he and his wife had noticed that they were the only "African-American patrons" in Wal-Mart.

(h) Detective Overland instructed Jobe and Houser to follow and stop the van containing the three Plaintiffs.

(i) Jobe and Houser turned on their emergency lights in an attempt to stop the van.

(j) Plaintiffs did not stop, even though they saw the police cars behind them with their lights flashing.

(k) One police car's siren had been activated.

(l) Plaintiffs finally drove into the Holiday Inn parking lot located approximately one mile from the Wal-Mart parking lot and stopped.

(m) Vanetta Kelso was driving the van.

An investigatory stop is permissible under the Fourth Amendment if the stop is supported by reasonable suspicion. *Terry v. Ohio*, 392 U.S. 1 (1968). "The Fourth Amendment seeks to prevent arbitrary police action, not to require absolute certainty before law enforcement officers may investigate." *United States v. Villalobos*, 161 F.3d 285,

292 (5th Cir. 1998) (citing *Alabama v. White*, 496 U.S. 325, 330 (1990)).

The Supreme Court has found that police may make an investigatory stop if they suspect a person is about to commit a crime, *e.g., Terry, supra;* is involved in criminal activity, *e.g., United States v. Brignoni-Ponce*, 422 U.S. 873, 881 (1975); was committing a crime at the moment of stop, *e.g., Adams v. Williams*, 407 U.S. 143 (1972); or was involved in a completed crime, *e.g., United States v. Hensley*, 469 U.S. 221, 229 (1985).

"Articulating precisely what 'reasonable suspicion' . . . mean[s] is not possible." *Ornelas v. United States*, 517 U.S. 690, 695 (1996). However, the Supreme Court has said that it is a "commonsense, nontechnical" conception that deals with "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Id.* (quoting *Illinois v. Gates*, 462 U.S. 213, 231 (1983)). "Reasonable suspicion" has further been described by the Supreme Court "simply as 'a particularized and objective' basis for suspecting the person stopped of criminal activity." *Ornelas*, 517 U.S. at 696 (quoting *United States v. Cortez*, 449 U.S. 411, 417-418 (1981)).

> The principal components of a determination of reasonable suspicion or probable cause will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause.

Ornelas, 517 U.S. at 696.

"Reasonable suspicion is a standard lower than probable cause. [internal citations omitted] Reasonable suspicion sufficient to justify a *Terry* stop exists when law enforcement officials are able to point to 'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.' " *United States v. Webster,* 162 F.3d 308, 332 (5th Cir. 1998), *cert. denied,* 120 S.Ct. 83 (1999). In *Webster,* the police relied upon a security guard's description of the defendant in making the investigatory stop. The Fifth Circuit found that the "reliability (in terms of veracity) of the guard, as a disinterested witness, is presumed," and that the police had "reasonable suspicion to stop" the defendant. *Id.*

Plaintiffs failed to stop for audible and visual police emergency signals. "[A]lthough flight alone will not provide probable cause that a crime is being committed, in appropriate circumstances it may supply the 'key ingredient justifying the decision of a law enforcement officer to take action.' " *United States v. Bowles,* 625 F.2d 526, 535 (5th Cir. 1980) (quoting *United States v. Vasquez,* 534 F.2d 1142, 1145 (5th Cir.), *cert. denied,* 429 U.S. 979 (1976)). " 'Flight invites pursuit and colors conduct' that might otherwise appear innocent." *Bowles, supra.*

Clearly, the police had reasonable suspicion to stop Vanetta Kelso, Patricia Bibbs, and Ezil Bibbs because (1) the police had received a report of a possible "pigeon drop" scam involving two black women in the Wal-Mart parking lot, (2) the victim of the attempted "pigeon drop" had given the police a description of two black women, (3) Officer Jobe had identified Vanetta Kelso and Patricia Bibbs as possible suspects based upon the description

given by the victim, (4) the police attempted to stop Plaintiffs after they exited the Wal-Mart parking lot, and (5) Plaintiffs refused to stop their vehicle for over a mile while followed by two marked police cars with emergency lights and siren activated.

It is interesting to note that although Plaintiffs claim that no crime had been committed which would justify the investigatory stop, they state in their complaint that there was "just a perceived attempt to swindle."

The Court finds that the Defendants had reasonable suspicion to suspect that the Plaintiffs had been involved in an attempted pigeon drop scam, therefore justifying an investigatory stop.

(2) Detention

The summary judgment evidence shows that, after the Plaintiffs stopped the van in the Holiday Inn parking lot:

(a) Vanetta Kelso produced a driver's license from the State of Tennessee, although she was a coach at Hampton University, which is located in Hampton, Virginia. When questioned about her Tennessee residency and telephone number, she told Defendant Houser that her Tennessee telephone number was no longer working.

(b) Both Patricia Bibbs and Ezil Bibbs produced drivers' licenses from the State of Louisiana, although Patricia Bibbs was a coach at Hampton University, located in Hampton, Virginia. Ezil Bibbs was married to Patricia Bibbs.

(c) After running a driver's license check, Defendants Jobe and Houser determined that the drivers' licenses did not appear to be valid.

(d) Plaintiffs were driving a rented van.

(e) Plaintiffs were uncooperative with the police during the investigatory stop.

(f) Ms. Hester, the victim, was brought to the scene within approximately 10-15 minutes of the initial stop for a possible identification

(g) Ms. Hester positively identified Vanetta Kelso and said that Patricia Bibbs could have been the other suspect but that she had on different clothes.

Once police officers make an investigatory stop, "the officers have two goals: to investigate and to protect themselves during the investigation." *United States v. Campbell*, 178 F.3d 345, 348 (5th Cir. 1999) (citing *Terry v.* Ohio, 392 U.S. 1, 23 (1968)).

Plaintiffs complain about the length of the detention before they were told they were under arrest and the failure of the officers to check their alibi witnesses.

The Supreme Court has explained that:

> In assessing whether a detention is too long in duration to be justified as an investigatory stop, we consider it appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant.

United States v. Sharpe, 470 U.S. 675, 686 (1985).

In the instant case, according to authenticated police records submitted as summary judgment evidence, Defendant Jobe identified Plaintiffs Vanetta Kelso and Patricia Bibbs as possible suspects at approximately 4:52 p.m. and he called for a backup at 4:54 p.m. Plaintiffs stopped in the parking lot of the Holiday Inn a few minutes after 5:00 p.m. Officers called the police department for a driver's license check at 5:14 p.m. and Detective Overland arrived at the Holiday Inn with Ms. Hester, the victim of the alleged scam, at 5:20 p.m. After Ms. Hester made a positive identification of Plaintiff Kelso and a possible identification of Plaintiff Patricia Bibbs, Detective Overland instructed Officer Jobe to make the arrest at approximately 5:30 p.m.

From the time of the initial investigatory stop to the time the decision to make an arrest was made, approximately 25-30 minutes had elapsed. This was not an unreasonable amount of time to conduct an investigation. *See United States v. Campbell, supra* (10-25 minutes not unreasonable); *United States v. Sharpe, supra* (20-minute stop not an arrest); *Allen v. City of Los Angeles,* 66 F.3d 1052 (9th Cir. 1995) (detention of suspect in police car for 24 minutes while police contacted car owner to determine if it had been stolen not unreasonable); *Alexander v. County of Los Angeles,* 64 F.3d 1315 (9th Cir. 1995) (detention for one hour for eye-witness identification not unreasonable); *Courson v McMillian,* 939 F.2d 1479 (11th Cir. 1991) (30-minute detention not unreasonable for an investigative stop); *Glenn v. State,* 967 S.W.2d 467 (Tex.App.-Amarillo 1998, pet. dism'd) (delay of 45-60 minutes waiting for drug detection dog not unreasonable).

Plaintiffs allege that they informed the police officers that Kelso and P. Bibbs were the women's basketball coaches at Hampton University and were in Lubbock with their team to play the Texas Tech University women's basketball team the next night. Plaintiffs allege the officers refused to contact the Texas Tech coach or other people to confirm their identity.

Police are not required to investigate alibi witnesses before making an arrest based upon probable cause. *Romero v. Fay,* 45 F.3d 1472, 1476-77 (10th Cir. 1995). Officers are also not required to conduct mini-trials by investigating alibi witnesses before making probable cause determination to arrest. *Brodnicki v. City of Omaha,* 75 F.3d 1261, 1264 (8th Cir.), *cert. denied,* 519 U.S. 867 (1996).

In *Blackwell, supra,* the police officer took the driver's license of the person he stopped and put it in his pocket without looking at it. Blackwell claimed that the officer acted unreasonably. The Fifth Circuit disagreed and found that the "question is only whether a reasonable officer [in the same position] could believe" that the person he had stopped was his suspect. *Blackwell,* 34 F.3d at 304. The Fifth Circuit cited *Hunter v. Bryant,* 502 U.S. 224, 258 (1991), which found that:

> [T]he court should ask whether the agents acted reasonably under settled law in the circumstances, not whether another reasonable, or more reasonable, interpretation of the events can be constructed . . . .

Further, the reasonableness of the officers' actions is not to be determined by "considering, with the benefit of

hindsight, what other, more reasonable actions might have been available." *Blackwell,* 34 F.3d at 304. The *Blackwell* court also noted that the Supreme Court has previously found in one case that the "officers in good faith believed an arrestee was their suspect even after the arrestee had produced identification to show that he was not the man they were seeking, observing that "aliases and false identifications are not uncommon." *Blackwell,* 34 F.3d at 304, n. 4 (quoting *Hill v. California,* 401 U.S. 797, 802 (1971)).

In the instant case, Plaintifts [sic] Vanetta Kelso and Patricia Bibbs were coaches at Hampton University, which is located in Hampton, Virginia. Kelso produced a driver's license from Tennessee, and Patricia Bibbs and Ezil Bibbs produced drivers' licenses from Louisiana. None of them produced a driver's license from Virginia.

The length of Plaintiffs' detention prior to the decision to make the arrest was not unreasonable.

(3) Probable Cause to Arrest

The summary judgment evidence shows that:

(a) None of the Plaintiffs had drivers' licenses from the State of Virginia, where Hampton University is located.

(b) The Plaintiffs were in a rented van.

(c) The police could not determine the validity of any of the Plaintiffs' drivers' licenses.

(d) Ms. Hester made a positive identification of Vanetta Kelso as one of the black females involved in the attempted "pigeon drop" scam.

(e) Ms. Hester made a possible or tentative identification of Patricia Bibbs.

(f) Ezil Bibbs was married to Patricia Bibbs, he joined his wife and Kelso in the van in the Wal-Mart parking lot after Defendant Jobe identified the two women as possible suspects, and he was uncooperative with police during questioning.

(g) Detective Overland made the decision to arrest the Plaintiffs after the victim, Ms. Hester, made a positive identification of Plaintiff Vanetta Kelso and told Detective Overland that Plaintiff Patricia Bibbs could possibly be the other black woman.

The reliability of a disinterested witness is presumed and the sufficiency of the description is largely a factual matter. *Webster,* 162 F.3d at 332.

> The Fourth Amendment requires that all arrests be based on probable cause. [internal citations omitted] Probable cause is "defined in terms of facts and circumstances 'sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offense.' "

Webster, 162 F.3d at 331 (quoting *Gerstein v. Pugh,* 420 U.S. 103, 111 (1975) (quoting *Beck v. Ohio,* 379 U.S. 89, 91 (1964))).

The touchstone of Fourth Amendment reasonableness is sufficient probability, not certainty. *Id.*

An investigatory stop may ripen into an arrest through the passage of time, and when this happens, the continued detention must be based upon probable cause.

Houston v. Clark County Sheriff Deputy John Does, 174 F.3d 809, 814 (6th Cir. 1999).

Detective Overland made the decision to place the Plaintiffs under arrest and gave instructions to the other officers to make the arrest. The arresting officers "are permitted to act on the probable cause determination of others in their department" and are not required to have personal knowledge of specific wrongdoings. *Webster*, 162 F.3d at 331. A police commander's probable cause determination can be imputed to the officers who actually effect the arrest. *Jones v. Watson*, 106 F.3d 774 (7th Cir. 1997).

> Probable cause exists when the facts available at the time of the arrest would support a reasonable person's belief that an offense has been, or is being, committed and that the individual arrested is the guilty party . . . .
>
> The Fourth Amendment is not violated by an arrest based on probable cause, even if the wrong person is arrested, if the arresting officer had a reasonable, good faith belief that he was arresting the correct person.

Blackwell, 34 F.3d at 302.

The issue of probable cause must be analyzed under the totality of the circumstances. *United States v. Garcia*, 179 F.3d 265, 268 (5th Cir. 1999).

"A police officer may draw inferences based on his own experience in deciding whether probable cause exists. *Ornelas v. United States*, 517 U.S. 690, 699 (1996).

> A trial judge views the facts of a particular case in light of the distinctive features and events of

> the community; likewise, a police officer views the facts through the lens of his police experience and expertise. The background facts provide a context for the historical facts, and when seen together yield inferences that deserve deference. *Id.*

"When considering what a 'reasonable person' would have concluded, [the court takes] into account the expertise and experience of the law enforcement officials." *Id.* The *Garcia* court noted that:

> In discussing the appropriate legal standard under which a court should determine if probable cause existed, we have taken note of the fact that the function of the arrest is not merely to produce someone in court for prosecution but also to enable a police officer who believes that the person has committed a crime to complete his investigation.

Garcia, 179 F.3d at 269, n. 2 (citing *United States v. Raborn*, 872 F.2d 589, 593 (5th Cir. 1989)).

> A "fair probability" does not mean that a reasonable official would have thought it more likely than not that the defendant committed a felony. Although the "fair probability" must certainly be more than a bare suspicion, our court has rejected the notion that the government must show that a reasonable person would have thought, by a preponderance of the evidence, that a defendant committed a crime. In short, the requisite "fair probability" is something more than a bare suspicion, but need not reach the fifty percent mark.

Garcia, 179 F.3d at 269 [internal citations omitted].

Once a defendant has been positively identified by witnesses, probable cause exists to believe that the defendant committed the crime and a subsequent arrest of the defendant is proper. *Anderson v. State*, 932 S.W.2d 502 (Tex. Crim. App. 1996), *cert. denied*, 521 U.S. 1122 (1997).

Although the victim, Ms. Hester, had only reported the involvement of two black women and had positively identified Plaintiff Vanetta Kelso as one of the women and said that Plaintiff Patricia Bibbs could have been the other woman, the police also had probable cause to arrest Plaintiff Ezil Bibbs.

"[P]robable cause must exist with respect to each person arrested, and 'a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search [arrest] that person.' " *United States v. Martinez-Molina*, 64 F.3d 719, 726 (1st Cir. 1995) (quoting *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979)).

"Mere association . . . does not, by itself, create probable cause for arrest. . . . '[I]n order to find probable cause based on association with persons engaging in criminal activity, some additional circumstances from which it is reasonable to infer participation in criminal enterprise must be shown.' " *United States v. Ramirez*, 963 F.2d 693, 698 (5th Cir.), *cert. denied*, 506 U.S. 944 (1992) (quoting *United States v. Hillison*, 733 F.2d 692, 697 (9th Cir. 1984)).

The First Circuit in *Martinez-Molina, supra*, listed some factors to consider in finding an inference of participatory involvement. Those factors include:

(1) whether known criminal activity was contemporaneous with association;

(2) whether the circumstances suggest that the criminal activity could have been carried on without the knowledge of all persons present;

(3) the nature of the place in which the arrest occurred;

(4) whether the individual himself was behaving suspiciously or was merely tainted by another; and

(5) the involvement is more than a momentary, random, casual, or apparent innocent association with the suspects.

The summary judgment evidence shows that Plaintiff Ezil Bibbs joined the other Plaintiffs in the van in the Wal-Mart parking lot after Officer Jobe had identified Vanetta Kelso and Patricia Bibbs as possible suspects based upon the identification reported to the police. Ezil Bibbs had a Louisiana driver's license, although he lived in Virginia. He was accompanying the two women identified as possible suspects. He was married to Patricia Bibbs, who had been identified as a possible suspect. He was uncooperative in answering the police officers' questions.

Further, a "pigeon drop" scam involves at least two con artists and sometimes more. According to Defendants' expert, Adolph Thomas, it is not uncommon for two pigeon drop actors to be accompanied by a male "who acts as a muscle man (a security man with oversight)." The third actor "acts as a lookout in addition to a rescuer in case of problems."

Based upon the totality of the circumstances, Detective Overland, and thus the individual officers, had probable cause to arrest the Plaintiffs, and their actions were reasonable under the circumstances.

IMPROPER MOTIVE

Plaintiff claims that they were arrested because of their race or "driving while black" in violation of 42 U.S.C. § 1981.

> To prevail under section 1981, the plaintiff must prove a *prima facie* case of intentional discrimination. The plaintiff may establish a *prima facie* case by direct evidence or, more commonly, by circumstantial evidence of discriminatory motive. To establish a section 1981 claim, the plaintiff must show that (1) he or she is a member of a racial minority; (2) the defendant had an intent to discriminate on the basis of race; and (3) the discrimination concerned one or more of the activities enumerated in the statute.

Bellows v. Amoco Oil Co., 118 F.3d 268, 274 (5th Cir. 1997), *cert. denied*, ___ U.S. ___, 118 S.Ct. 739 (1998) [internal citations omitted].

A subjective belief that race motivated officers to seek an arrest, creates no jury issue on motivation. *Ryans v. Gresham*, 6 F.Supp.2d 595, 603 (E.D. Tex. 1998).

Plaintiffs have provided no facts to support their claim of racial motivation. The victim had identified two black women, so the police would not be looking for white women. The victim positively identified Plaintiff

Vanetta Kelso and stated that Plaintiff Patricia Bibbs possibly fit the description of the other black woman. Further, Ezil Bibbs states in his affidavit that he and his wife, Patricia, had noticed that they were the "only African-American patrons" in the Wal-Mart store.

There is no evidence to prove racial discrimination, and Plaintiffs' § 1981 claim must fail.

INADEQUATE MEDICAL CARE

Plaintiffs allege a claim for inadequate medical care on behalf of Plaintiff Vanetta Kelso. Kelso alleges that she became nauseated while handcuffed and sitting in the police patrol car after she had been arrested. Kelso's affidavit states that Plaintiffs were detained for approximately 1½ hours before they were told they were under arrest. She states that she and Patricia Bibbs were placed in the same patrol car for approximately 30 minutes, before Patricia Bibbs was transferred to another unit. According to Kelso, she became nauseated after sitting alone in the car for another 15-20 minutes. She was approximately 10-12 weeks pregnant at the time. She began to vomit in the patrol car and yelled for assistance for 5-10 minutes before an officer opened the door. She exited the patrol car and continued to vomit for another 5-10 minutes.

The police radio logs and police records dispute Kelso's time frame. According to the police log, an EMS unit was dispatched at 5:45 p.m. – approximately 15 minutes after Plaintiffs were placed under arrest. Kelso was attended to by EMS personnel upon arrival and was

then transported to the University Medical Center emergency room where she was examined by a doctor.

Not every claim of inadequate or improper medical treatment is a violation of the Constitution. *Estelle v. Gamble,* 429 U.S. 97, 105-107 (1976).

In *Hare v. City of Corinth, Miss.,* 74 F.3d 633, 650 (5th Cir. 1996) *(en banc),* the Fifth Circuit found that the right to adequate medical care for pretrial detainees flows from the Fourteenth Amendment to the Constitution. The Court held that:

> [T]he episodic act or omission of a state jail official does not violate a pretrial detainee's constitutional right to be secure in his basic human needs, such as medical and safety, unless the detainee demonstrates that the official acted or failed to act with deliberate indifference to the detainee's needs.

Id. at 647-48.

An official's liability for inadequate medical care under the Fourteenth Amendment cannot attach unless the official had subjective knowledge of a substantial risk of serious harm to the pretrial detainee, but responded with deliberate indifference to that risk. *Hare,* 74 F.3d at 650.

The Supreme Court has defined deliberate indifference as "subjective recklessness." "[T]he official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference. *Farmer v. Brennan,* 511 U.S. 825, 840 (1994).

Negligent or mistaken medical treatment or judgment does not provide the basis for a civil rights action. *Graves v. Hampton*, 1 F.3d 315, 319 (5th Cir. 1993).

"[M]ere negligence, neglect or medical malpractice" does not give rise to a § 1983 cause of action. *Varnado v. Lynaugh*, 920 F.2d 320, 321 (5th Cir. 1991).

A "delay in medical care can only constitute [a] . . . violation if there has been deliberate indifference, which results in substantial harm." *Mendoza v. Lynaugh*, 989 F.2d 191, 195 (5th Cir. 1993).

There is no summary judgment evidence to support Plaintiff Kelso's claim that any of the Defendants were deliberately indifferent to her medical needs.

CIVIL CONSPIRACY CLAIMS

Plaintiffs have alleged no facts regarding their claims of conspiracy.

Bare conclusory allegations of a conspiracy are insufficient to state a § 1983 conspiracy claim, and Plaintiffs must plead specific facts that, if proved, would establish the elements of the claim. *Marts v. Hines*, 68 F.2d 134, 136 (5th Cir. 1995).

Plaintiffs also allege a conspiracy under 42 U.S.C. § 1985. The only subsection which might apply to Plaintiffs' claim is subsection (3). Essential to a § 1985(3) claim is the averment that a conspiracy was motivated by racial animus. *Word of Faith World Outreach Ctr. Church, Inc. v. Sawyer*, 90 F.3d 118, 124 (5th Cir. 1996), *cert. denied*, 520 U.S. 1117 (1997); *Green v. State Bar of Texas*, 27 F.3d 1083, 1088 n. 8 (5th Cir. 1994).

Plaintiffs must plead facts showing that the defendants agreed to commit an act made illegal by § 1983 or § 1985. *Arsenaux v. Roberts*, 726 F.2d 1022, 1024 (5th Cir. 1982) (citing *Crowe v. Lucas*, 595 F.2d 985, 993 (5th Cir. 1979)).

Plaintiffs have failed to provide any summary judgment evidence to show any proof of racial animus attributable to any of the Defendants; therefore, Plaintiffs fail to state a constitutional violation under §§ 1983 and 1985(3).

42 U.S.C. § 1986 allows Plaintiffs to bring a cause of action for "failure to prevent a civil conspiracy" under § 1985. However, the complete absence of evidence proving Defendants violated § 1985 prevents Plaintiffs from recovering under § 1986.

STATE LAW CLAIMS

The complaint alleges state law claims on behalf of the individual Plaintiffs under the Texas Tort Claims Act, Chapter 101, Section 100.001 et seq., Tex. Civ. Prac. & Rem. Code, for (1) intentional infliction of emotional distress, (2) tortious interference with a contract, (3) false arrest and false imprisonment, and (4) libel, slander, and defamation. Plaintiff Hampton University alleges a cause of action for tortious interference with a contract.

Plaintiffs claim that Defendants had no legal right to stop, arrest, and imprison Plaintiffs.

Texas law provides that "[g]overnment employees are entitled to official immunity from suit arising from performance of their (1) discretionary duties in (2) good

faith as long as they are (3) acting within the scope of their authority." *Hart v. O'Brien*, 127 F.3d 424, 450 (5th Cir. 1997), *cert. denied*, ___ U.S . ___, 119 S.Ct. 868 (1999) (citing *City of Lancaster v. Chambers*, 883 S.W.2d 650, 653 (Tex. 1994)); *Wren v. Towe*, 130 F.3d 1154, 1160 (5th Cir. 1997), *cert. denied*, ___ U.S. ___, 119 S.Ct. 51 (1998) (citing *City of Lancaster v. Chambers*, 883 S.W.2d 650, 653 (Tex. 1994)). "Official immunity in Texas is substantially the same as qualified immunity under federal law," and requires that the officials' activities be taken in good faith, i.e. are objectively reasonable. *Hart, supra.*

Defendants' actions were in good faith and were within the scope of their authority as law enforcement officers.

Defendants are immune from suit as to Plaintiffs' state law claims.

Further, because all of Plaintiffs' claims and alleged damages arose out of their claims for false arrest, and are based on a single event, they cannot pursue their claims under the Texas Tort Claims Act. *Taylor v. Gregg*, 36 F.3d 453, 457 (5th Cir. 1994); *Drain v. Galveston County*, 979 F.Supp. 1101, 1104-05 (S.D. Tex. 1997).

"A party alleging tortious interference must prove four elements to sustain its claim: (1) that a contract subject to interference exists; (2) that the alleged act of interference was willful and intentional; (3) that the willful and intentional act proximately caused damage; and (4) that actual damage or loss occurred." *ACS Investors, Inc. v. McLaughlin*, 943 S.W.2d 426 (Tex. 1997).

There is no evidence to support Plaintiffs' tortious interference with a contract claim.

MISCELLANEOUS

Plaintiffs allege that Defendants Jobe and Houser were personally involved in their stop, detention, and arrest. With regard to Defendant McNeill, Plaintiffs allege that Defendant McNeill had a sarcastic attitude toward Plaintiffs. No other allegations are made against Defendant McNeill, and none of Plaintiffs' summary judgment evidence, including their own affidavits, state any evidence against Defendant McNeill.

"Personal involvement is an essential element of a civil rights cause of action." *Thompson v. Steele,* 709 F.2d 381, 382 (5th Cir.), *cert. denied,* 464 U.S. 897 (1983).

Defendant Hearron is alleged to have responded to Plaintiff Kelso in an "aggressive and belligerent fashion." Plaintiff Kelso's affidavit tracks the factual allegations of the complaint. Patricia Bibbs states in her affidavit that Defendant Hearron approached Kelso "very wildly and aggressively, pushing his chest very close to hers and asking in a sarcastic manner 'can you see my name now?' " There are no allegations of threats, force, or other action being taken by Defendant Hearron. Further, under the cause of action portion of Plaintiffs' complaint, there are no alleged violations by Defendant Hearron.

Claims of verbal abuse and harassment are not actionable under § 1983. *Bender v. Brumley,* 1 F.3d 271, 274 n. 4 (5th Cir. 1993).

CLAIMS AGAINST POLICE CHIEF KEN WALKER AND THE CITY OF LUBBOCK

In Plaintiffs' complaint, they named Lubbock Police Chief Ken Walker, in his individual and official capacity, in the caption of the case and in the first paragraph of the complaint. Defendant Walker is not mentioned in any other portion of the complaint, nor are there any specific allegations made against him. Under their "State Law Claims," they state that the "defendants named individually" caused injury and damage to the Plaintiffs. To the extent that Plaintiffs have sued Defendant Walker under their state law claims, their claims must fail for the same reasons set forth above.

Plaintiffs have produced no summary judgment evidence of any personal involvement by Defendant Walker in the acts complained about, nor have they presented any evidence to support a claim of custom, policy, pattern, or practice.

To the extent that Plaintiffs are suing Defendant Walker in his supervisory capacity, "supervisory officials may be held liable only if: (1) they affirmatively participate in acts that cause constitutional deprivations; or (ii) implement unconstitutional policies that causally result in plaintiff's injury." *Mouille v. City of Live Oak, Tex.*, 977 F.2d 924, 929 (5th Cir. 1992), *cert. denied*, 508 U. S. 951 (1993).

"Vicarious liability does not apply to § 1983 claims." *Pierce v. Texas Dep't of Criminal Justice, Institutional Div.*, 37 F.3d 1146, 1150 (5th Cir. 1994), *cert. denied*, 514 U.S. 1107 (1995).

Generally, a supervisor may be held liable only if he was personally involved in the constitutional deprivation, or there was a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation. *Mouille, supra.* "Personal involvement is an essential element of a civil rights cause of action." *Thompson v. Steele,* 709 F.2d 381, 382 (5th Cir. 1983), *cert. denied,* 464 U.S. 897 (1984).

A claim against a police chief should be dismissed where there was no evidence that either (1) the chief had any personal knowledge of, or connection with, the policy of which the plaintiff complained, or (2) the chief had any personal involvement with the events respecting the plaintiff. *McConney v. City of Houston,* 863 F.2d 1180, 1183 (5th Cir. 1989). *See also, Bigford v. Taylor,* 834 F.2d 1213, 1220 (5th Cir.), *cert. denied,* 488 U.S. 851 (1988) (holding that, in a case in which the sheriff was not personally involved in the acts causing the constitutional deprivation, the plaintiff must show some other act by the sheriff that caused the violation).

Defendant Walker, as a supervisor, could be held liable for inadequate supervision only if the failure to supervise amounted to gross negligence or deliberate indifference and if the failure to supervise was a proximate cause of a constitutional violation. *See Doe v. Taylor Indep. Sch. Dist.,* 15 F.3d 443, 456 (5th Cir.), *cert. denied sub nom. Lankford v. Doe,* 513 U.S. 815 (1994).

Insofar as Plaintiffs' complaint can be construed as alleging a "failure-to-train" action against Defendant Walker, the inadequacy of policy training may serve as the basis for civil rights liability only where the failure to

train amounts to deliberate indifference to the rights of Plaintiffs. *City of Canton v. Harris*, 489 U.S. 378, 388 (1989).

Plaintiffs must meet three requirements before they can recover under a failure-to-train theory. They must demonstrate that (1) the training procedures of the City's policymaker were inadequate, (2) the City's policymaker was deliberately indifferent in adopting the training policy, and (3) the inadequate training policy directly caused injury to the Plaintiffs. *City of Canton*, 489 U.S. at 390-92; *Benavides v. County of Wilson*, 955 F.2d 968, 972-73 (5th Cir.), *cert. denied sub nom. Bassler v. County of Wilson*, 506 U.S. 824 (1992).

Plaintiffs have failed to identify any specific inadequacy in the City's training programs for law enforcement personnel or any specific incident of injury to a citizen other than themselves. *See Languirand v. Hayden*, 717 F.2d 220, 227 (5th Cir. 1983), *cert. denied*, 467 U.S. 1016 (1984) (holding that a § 1983 plaintiff asserting police misconduct must allege a "pattern of similar incidents in which citizens were injured or endangered" by policy or consistent misconduct, or that serious incompetence or misbehavior was general or widespread throughout the police force).

The only summary judgment evidence presented by Plaintiffs is an affidavit from their expert, Jade M. Meeker, which points out several examples where, in his opinion, the police officers did not follow the City's law enforcement procedures. Plaintiffs have not submitted any summary judgment evidence of a pattern of similar incidents.

To the extent that Plaintiffs have sued Defendant Walker in his official capacity, a suit against a public official in his or her "official capacity" is, in reality, a suit against the City of Lubbock, the governmental entity he represents. *See Hafer v. Melo*, 502 U.S. 21, 25 (1991); *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985); *Sanders v. English*, 950 F.2d 1152, 1159 n. 13 (5th Cir. 1992). The City must have delegated its final policymaking authority in the area of law enforcement to Walker. *Crowder v. Sinyard*, 884 F.2d 804 (5th Cir. 1989), *cert. denied*, 496 U.S. 924 (1990). Although Plaintiffs did not allege in their complaint, nor have they produced any summary judgment evidence, that Defendant Walker has been delegated final policymaking authority in the area of law enforcement, both Defendant Walker and the City of Lubbock have admitted that Defendant Walker has final policymaking authority.

Plaintiffs have also sued the City of Lubbock, and their complaint makes specific allegations against the City, alleging that the City's custom, policy, pattern, or practice discriminated against them because of their race, and that such custom, policy, pattern or practice deprived them of other constitutional rights.

"Congress did not intend to impose liability on a municipality unless deliberate action attributable to the municipality itself is the 'moving force' behind the plaintiff's deprivation of federal rights." *Board of County Comm'rs of Bryan County, Okla. v. Brown*, 520 U.S. 397, 400 (1997) (citing *Monell v. New York City Dep't of Social Servs.*, 436 U.S. 658, 694 (1978)). The City of Lubbock cannot be held liable under a theory of *respondeat superior*. *See Oklahoma City v. Tuttle*, 471 U.S. 808, 181 (1985).

Under *Monell v. Department of Social Services of City of New York*, 436 U.S. 658, 694 (1978), government liability will attach only when the constitutional injury results from the implementation or "execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy. . . . "

> As our § 1983 municipal liability jurisprudence illustrates, however, it is not enough for a § 1983 plaintiff merely to identify conduct properly attributable to the municipality. The plaintiff must also demonstrate that, through its deliberate conduct, the municipality was the "moving force" behind the injury alleged. That is, a plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights.

Brown, 520 U.S. at 404.

To recover under their claims regarding an unconstitutional policy, Plaintiffs must plead and prove that (1) an unconstitutional policy existed; (2) the City of Lubbock or its policymaker actually or constructively knew of its existence; (3) a constitutional violation occurred; and (4) the custom or policy was the moving force behind the violation. *Meadowbriar Home for Children, Inc. v. Gunn*, 81 F.3d 521, 532-33 (5th Cir. 1996).

The Supreme Court held in *City of Los Angeles v. Heller*, 475 U.S. 796 (1986), that if there is no constitutional violation, there can be no liability on the part of the individual officer or the government body. "If a person

has suffered no constitutional injury at the hands of the individual police officer, the fact that the departmental regulations might have *authorized* the use of constitutionally excessive force is quite beside the point." *Id.* at 799 (emphasis in original).

> Even assuming for the purposes of summary judgment that the training of its officers was unconstitutional, [the municipality] cannot be held liable when, as here, no constitutional violation occurred because the officers had probable cause to detain Peller. . . . Because the officers had probable cause to detain Peller . . . [the municipality] necessarily is not liable for any alleged injuries.

S.P. v. City of Takoma Park, Md., 134 F.3d 260, 272, 274 (4th Cir. 1998); *Estate of Phillips v. City of Milwaukee*, 123 F.3d 586, 597 (7th Cir. 1997) ("Neither the City nor the police officers' supervisor can be held liable on a failure to train theory or on a municipal policy theory absent a finding that the individual police officers are liable on the underlying substantive claim."); *Wilson v. Meeks*, 98 F.3d 1247, 1255 (10th Cir. 1996) ("The district court correctly concluded no municipal liability could be found in this case because there was no constitutional violation committed by any of the individual defendants."); *Abbott v. City of Crocker, Mo.*, 30 F.3d 994, 998 (8th Cir. 1994) ("The City cannot be liable in connection with . . . the invalid arrest claim, whether on a failure to train theory or a municipal custom or policy theory, unless [the officer] is found liable on the underlying substantive claim.").

Further, with regard to Plaintiffs' racial motivation claim, Plaintiffs have failed to produce any evidence of

racial motivation other than their subjective beliefs and the opinion of their expert that he believes the police were racially motivated. They must introduce more evidence than merely the opinion of an expert witness. *Snyder v. Trepagnier,* 142 F.3d 791, 799 (5th Cir. 1998), *cert. denied,* ___ U.S. ___, 119 S.Ct. 1493 (1999).

In the instant case, Plaintiffs have failed to produce any summary evidence (1) of a custom, policy, practice, or pattern; (2) of the details of any specific custom, policy, practice, or pattern they claim caused them specific injuries; (3) to identify any pattern of injuries linked to any custom, policy, practice, or pattern; or (4) to identify any deficiency in the City's training program which was closely related to their injuries.

Based on the summary judgment evidence before the Court, there was no deficiency in the training and supervision of the individual police officers involved, and there was no custom, policy, practice, or pattern of the City of Lubbock that was the "moving force" behind any injuries to the Plaintiffs. *See Burge v. Parish of St. Tammany,* 187 F.3d 452 (5th Cir. 1999). Further, there was probable cause to arrest all three Plaintiffs.

Plaintiffs' claims against Defendants Walker and the City of Lubbock must fail.

CLAIMS FOR ATTORNEYS' FEES

Plaintiffs have made a claim for attorneys' fees as potentially prevailing parties under 42 U.S.C. §§ 1981,

1983, and 1985. However, as the Court has entered summary judgment against them as to these claims, Plaintiffs' § 1988 claim fails as well.

CONCLUSION

The Court finds that summary judgment should be, and it is hereby, **GRANTED** as to all claims filed against Defendants David Houser, Keith Jobe, Brian McNeill, Roger Hearron, and Ken Walker, each in his individual and official capacities, and the City of Lubbock.

All relief not expressly granted is denied.

SO ORDERED.

Judgment shall be entered accordingly.

Dated this 10th day of December, 1999.

/s/ Sam R. Cummings
SAM R. CUMMINGS
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

PATRICIA BIBBS, et al.,	)	
	)	
Plaintiffs,	)	Civil Action No.
v.	)	5:99-CV-193-C
	)	
CITY OF LUBBOCK, et al.,	)	
	)	
Defendants.	)	

JUDGMENT

(Filed Dec. 10, 1999)

On this date the Court granted summary judgment as to all claims filed against Defendants David Houser, Keith Jobe, Brian McNeill, Roger Hearron, and Ken Walker, each in his individual and official capacities, and the City of Lubbock. The following judgment is, therefore, entered:

IT IS ORDERED, ADJUDGED, AND DECREED that Plaintiffs, PATRICIA BIBBS, EZIL BIBBS, VANETTA KELSO, and HAMPTON UNIVERSITY, take nothing as against Defendants DAVID HOUSER, KEITH JOBE, BRIAN MCNEILL, ROGER HEARRON, and KEN WALKER, each in his individual and official capacities, and the CITY OF LUBBOCK. Court costs are taxed against Plaintiffs. This judgment shall be a final judgment

as to all claims alleged against such Defendants, pursuant to Fed. R. Civ. P. 54(b).

Dated this 10th day of December, 1999.

/s/ Sam R. Cummings
SAM R. CUMMINGS
UNITED STATES
DISTRICT JUDGE

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-11011

PATRICIA BIBBS; EZIL BIBBS; HAMPTON UNIVERSITY; VANETTA KELSO

Plaintiffs - Appellants

v.

CITY OF LUBBOCK, TX; ET AL

Defendants

MIKE OVERLAND, Individually and in his official capacity

Defendant - Appellee

No. 99-11379

PATRICIA BIBBS; EZIL BIBBS; HAMPTON UNIVERSITY; VANETTA KELSO

Plaintiffs - Appellants

v.

CITY OF LUBBOCK, TEXAS; ET AL

Defendants

CITY OF LUBBOCK, TEXAS; KEN WALKER, Individually and in his official capacity as Police Chief; DAVID HOUSER, Individually and in his official capacity; KEITH JOBE, Individually and in his official capacity; MCNEILL,

Individually and in his official capacity; OFFICER HEARRON, Individually and in his official capacity

Defendants - Appellees

Appeals from the United States
District Court for the
Northern District of Texas, Lubbock

ON PETITION FOR REHEARING EN BANC
(Filed Jan. 9, 2001)

(Opinion 11/28/00, 5 Cir., _____, ___ F.3d ___)

Before HIGGINBOTHAM and DeMOSS, Circuit Judges, and KENT*, District Judge.

PER CURIAM:

(X) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED.R.APP.P. and 5TH CIR.R. 35), the Petition for Rehearing En Banc is DENIED.

( ) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service not having voted in favor (FED.R.APP.P and 5TH CIR.R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

[Illegible]
United States Circuit Judge

*District Judge of the Southern District of Texas, sitting by designation.

REHG-6a

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

PATRICIA AND EZIL BIBBS VANETTA KELSO, and HAMPTON UNIVERSITY Plaintiffs v CITY OF LUBBOCK, and POLICE CHIEF KEN WALKER, OFFICERS DAVID HOUSER KEITH JOBE, BRIAN MCNEILL, R. HEARRON, and MIKE OVERLAND, all individually and in their official capacities, UNKNOWN EMPLOYEES OF THE EMERGENCY MEDICAL SERVICES AT UNIVERSITY MEDICAL CENTER all in their individual capacities, Defendants	)	CIVIL ACTION NO. 5:99-CV-193-C

AFFIDAVIT OF MIKE OVERLAND

STATE OF TEXAS
COUNTY OF LUBBOCK

BEFORE ME, the undersigned authority, on this date personally appeared Mike Overland who after being duly sworn upon his oath did depose and say:

"1. My name is Mike Overland.

2. I have been employed by the Lubbock Police Department for more than 28 years, since September 1970. The last 12 years I have served as a detective in the crimes against property division.

3. I have investigated several pigeon drop scams in the past few years. I have also learned about these scams from other officers and from periodic training.

4. On November 16, 1998 my boss, Captain Randy Ward, instructed me to set up surveillance at Wal-Mart for a pigeon drop based on an attempt made about an hour before.

5. Before I reached Wal-Mart I learned that Keith Jobe had identified a suspect in the Wal-Mart parking lot. The person fit the description as to height, weight, race and clothing that had been provided by Ms. Hester. She was accompanied by another female who could have been involved and by a male.

6. The suspects were in a rental van.

7. The officers requested instructions when the van began to move. I instructed them to stop the van and obtain identification of the suspects.

8. The officers reported that the van did not heed the signals to stop, but continued on.

9. Officer Houser reported that the passengers were engaged in furtive movements as the van continued to ignore signals to stop.

10. The officers reported the van stopped at the traffic light at Indiana and South Loop access road and remained there during a light cycle.

11. After the van eventually stopped the suspects presented drivers' licenses from Louisana and Tennessee but claimed to live in Virginia. The licenses did not appear to the [sic] authentic.

12. I have personal knowledge that both Officers Houser and Jobe have authority to direct, control or regulate traffic. I personal [sic] observed that both Officer Jobe and Officer Houser were in uniform and they were wearing their badge of office prominently on their uniform shirt. I also observed that the vehicles were appropriately marked as official police vehicles.

13. The officers reported that the suspects were uncooperative.

14. I took Elenita Hester to view the two women. She positively identified Vanetta Kelso as one of the actors. She stated that Ms. Bibbs "could be" the other, but said if it is she has changed clothing.

15. I believed Ms. Hester to be conscientious and careful about her identification. She seemed credible.

16. I directed that all the occupants of the van, Vanetta Kelso, Patricia Bibbs and Ezil Bibbs, be placed under arrest. I considered that I had probable cause to believe they had conspired to commit theft. Based on their response to the signals to stop and their general uncooperativeness, I believed that Patricia Bibbs and Ezil Bibbs were engaged in the activity with Ms. Kelso.

17. More detailed information about the events on November 16, 1998 are contained in the case reports of Officers Jobe and Houser, Detective McNeill and my own case report. These reports are attached to this affidavit

and incorporated herein by reference. I have reviewed those reports prior to making this affidavit.

18. The other officers present at the time I made the decision to arrest did not question my decision or express any reservations.

19. The fact that the suspects were African-American did not influence my actions or my decisions. The actors in the pigeon drop scam were described by the victim as African-American. That was the only role race had in this matter from my standpoint.

20. I did not know that Ms. Kelso or any of the Plaintiffs needed medical attention until after Ms. Kelso had been transported to University Medical Center.

21. I did not know about any contracts involving Plaintiffs and did not intend to interfere with any such contracts.

22. I did not make statements to anyone outside the course of my duties as a police officer investigating the pigeon drop scam and Plaintiffs' role in that offense. All inquires I made were made in good faith in an effort to determine if Plaintiffs were or were not guilty of an offense.

23. I did nothing for the purpose of causing any of the Plaintiffs emotional distress."

FURTHER AFFIANT SAITH NOT.

/s/ Michael Overland
MIKE OVERLAND

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public in and for the state of Texas, on the 29th day of July, 1999.

[SEAL] KATHY A. FOWLER
Notary Public, State of Texas
My Commission Expires
06-14-2001

/s/ Kathy Fowler

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

PATRICIA AND EZIL BIBBS, VANETTA KELSO, and HAMPTON UNIVERSITY	§	CIVIL ACTION NO. 5:99-CV-193-C
VS.	§	
CITY OF LUBBOCK, and POLICE CHIEF KEN WALKER, OFFICERS DAVID HOUSER, KEITH JOBE, BRIAN MCNEILL, R. HEARRON and MIKE OVERLAND, all individually and in their official capacities, UNKNOWN EMPLOYEES OF THE EMERGENCY MEDICAL SERVICES AT UNIVERSITY MEDICAL CENTER, all in their individual capacities	§	

AFFIDAVIT OF ROGER HEARRON

STATE OF TEXAS §

COUNTY OF LUBBOCK §

BEFORE ME, the undersigned authority, on this day personally appeared ROGER HEARRON, who after being by me duly sworn, upon his oath says:

"The facts set hereinbelow are true and correct. I am over eighteen (18) years of age, and I am under no legal disability that would prevent me from making this Affidavit.

1. My name is ROGER HEARRON.

2. I have been employed by the Lubbock Police Department for more than twenty-two (22) years as a police officer.

3. I am a patrol sergeant, and as such I am the first line supervisor for a squad of eight (8) men. I am assigned to a quadrant of the City of Lubbock. My responsibility is to respond to calls, enforce the laws of the State of Texas and the City of Lubbock, and provide any other citizen assistance that can be offered or needs to be performed.

4. I have been a sergeant for over eight (8) years.

5. I am a certified peace officer. I am TCLEOSE certified (Texas Commission on Law Enforcement Officers Standards and Education) which I understand certifies all lawfully employed peace officers in the State of Texas.

6. I have maintained my status as a certified peace officer. I have had more than forty (40) hours training every two (2) years.

7. My training included issues involving racial or ethnic sensitivity. The Lubbock Police Department requires such training of all its officers.

8. I have an advanced TCLEOSE certificate.

9. In my duties as a police officer, I have never singled any person or persons out on the basis of racial bias or animus. I have never observed that practice by any officers who serve on the shifts that I supervise.

10. I would not tolerate any such activity or racial profiling by any officer under my command.

11. Racial animus or bias played no part in any decision I made during the detention of Vanetta Kelso, Patricia Bibbs or Ezil Bibbs. I did not permit or observe racial animus or bias play any part in any decision made by Officers David Houser and Keith Jobe who were under my command on November 16, 1998 during the period of time I was involved in the detention and arrest of Ms. Kelso and Mr. and Mrs. Bibbs.

12. All of my contact with Ms. Kelso and Mr. and Mrs. Bibbs was on November 16, 1998 while I was on duty as a sergeant and line supervisor with the City of Lubbock Police Department. All of my actions and directions I gave concerning Mr. and Mrs. Bibbs and Ms. Kelso were in the course and scope of my official duties as a Lubbock police officer. I believe my acts were in accordance with clearly established law, and I believe I acted as a reasonable peace officer would have acted under the same or similar circumstances.

13. As part of my job as sergeant, I monitor radio traffic, particularly that concerning the quadrant of the City I supervise during the evening shift (2:30 p.m. until 11:00 p.m.).

14. I was generally aware Officer Keith Jobe had been dispatched to 57th Street sometime before 5:00 p.m.

15. I was aware Officer David Houser was dispatched to assist Officer Jobe at the Wal-Mart parking lot on Loop 289 South on November 16, 1998.

16. As I continued to monitor the official police dispatch, I became aware that Officers Houser and Jobe were following a vehicle that would not stop.

17. I monitored the vehicle pursuit closely to determine possible hazards to the rest of the public as part of my job as sergeant.

18. I became aware from official radio communication that the vehicle was finally stopped at the Holiday Inn South parking lot.

19. I continued to the Holiday Inn South parking lot.

20. When I first arrived, I observed two (2) marked police cars, a detective police car, and a white van. (I gathered the van was the vehicle Houser and Jobe had tried to stop.)

21. I was in official police uniform, as were Officers Jobe and Houser. Detective McNeill was in an unmarked police car and was in street clothes.

22. I remained at the Holiday Inn South on November 16, 1998, for approximately 50 to 55 minutes. My recollection is the van had been stopped 3 to 4 minutes before I arrived at the Holiday Inn South.

23. Once I arrived, I was the highest ranking officer on the scene. I was aware generally that the investigatory detentions involved some type of theft or attempted theft.

I had garnered this information as I monitored the radio traffic.

24. I became aware the suspects being detained were in a rental van.

25. I was aware some of the occupants of the van matched the description of a theft suspect at the South Loop 289 Wal-Mart.

26. I was aware the rental van had an out-of-town license plate.

27. I received information shortly after I arrived at the Loop 289 Holiday Inn South some of the occupants of the van had been observed in suspicious or furtive activities within the van during the police pursuit.

28. I was aware from the police radio the driver of the van had ignored visible and audible police commands to stop the vehicle.

29. I became aware the occupants of the van immediately upon being stopped refused to cooperate with or share requested information as my officers continued to aid Detective Overland.

30. I viewed the occupants' drivers' licenses which did not appear to be authentic.

31. I gathered information at the Holiday Inn South the occupants of the van gave a different state residence from their driver's license identification (Virginia as opposed to Louisiana and Tennessee).

32. Based upon all I observed at the Holiday Inn South and all the information I received on the police

radio, I had both reasonable suspicion and probable cause to believe the occupants of the van were the actual individuals involved in some type of theft or attempted theft at the South Loop 289 Wal-Mart Store.

33. At the scene of the Plaintiffs' detention, it was my duty to assist the detective division (specifically, Detective Mike Overland, who was directing the investigation) in the investigation of a "pigeon drop" at the South Loop Wal-Mart facility.

34. I was informed by official police radio, in order to continue assisting the detective investigation of the van occupants, that a field observation by an apparent victim would be made.

35. At the scene of the Plaintiffs' detention, I was receiving instructions from the detective division through the police radio.

36. After Detective Overland arrived, I observed the field identification and saw nothing indicating there was any problem or difficulty with the identification, as pertained to visibility or lighting.

37. I was never made aware there was any medical need by Mr. or Mrs. Bibbs. In fact, I adjusted Mr. Bibbs' handcuffs from back to front to be sure he was comfortable, as he communicated to me some shoulder discomfort with his hands handcuffed behind him.

38. Concerning Ms. Kelso's medical needs: Within 5 minutes after we placed Mr. and Mrs. Bibbs and Ms. Kelso in the respective police cars, Officer Houser told me Ms. Kelso was throwing up in Officer Jobe's car. I immediately responded to that situation and within 1

minute of the time I became aware Ms. Kelso was nauseated and possibly pregnant, I ordered EMS be called to get Ms. Kelso to the hospital and be sure any medical care she might need was immediately offered. The EMS First Response Unit arrived within 2 or 3 minutes of our call. An ambulance arrived 2 or 3 minutes after the EMS First Response Unit.

39. No more than 7 to 8 minutes elapsed from the time Ms. Kelso was first placed in Officer Jobe's police car until the EMS First Response Unit arrived on the scene to assess and meet any medical needs she had.

40. No more than 1 to 2 minutes elapsed from the time I first became aware Ms. Kelso was nauseated until I assessed the situation and called for professional medical care for her.

41. I was not aware at the time Detective Overland directed the arrest of the occupants of the van of any contractual obligations or rights claimed by the Plaintiffs.

42. I did nothing for the purpose or intent of causing the Plaintiffs' emotional distress.

43. Many times during the many years I have served as a police officer, I have been directed by police radio communications, information and directions from other officers (including detectives) regarding the detention and arrest of suspects meeting a certain description until further investigation can be accomplished without knowing the specifics of the criminal activity charged.

44. I knew the three (3) individuals we detained and were directed to arrest were suspects in some type of

theft-related offense. I perceived the offense to be a felony, based upon the information I received. Both the police radio and the computer terminal provide information to detain suspects. I saw nothing which indicated to me that any of the activity of the other officers was unreasonable.

45. I did not participate in any conspiracy to misuse Plaintiffs in any form.

46. I am aware of no conspiracy; I merely followed my official duties and obligations as a police officer. Based upon the instructions I was given, all of which from my observations and the information given to me, the actions taken and directions given me, appeared to be objectively reasonable.

47. I acted in a good faith reasonable belief my actions were necessary and in accordance with the clearly established law as I understood it in the course of my training, experience and official duties of a City of Lubbock police officer on November 16, 1998.

48. I did nothing with the intent of causing Plaintiffs' emotional distress.

49. The fact that the occupants of the van were African-American did not influence or dictate any of my actions on November 16, 1998. Race had absolutely no role in any action or decision I took or made.

50. Everything I did was in the furtherance of my duties as a police officer. It is not at all unusual for me to receive a request from either a detective or another part of the police department to detain or identify someone

who is a suspect. I would be derelict in my duties if I refused such direction.

51. I did nothing for the purpose of causing Plaintiffs any emotional distress or physical discomfort. "

Further, Affiant sayeth not.

/s/ Roger D. Hearron
ROGER HEARRON

SUBSCRIBED AND SWORN TO BEFORE ME by the said ROGER HEARRON, on this the 2nd day of September, 1999, to certify which witness my hand and seal of office.

/s/ Kay C. Johnson
Notary Public, State of Texas

[SEAL]
KAY C. JOHNSON
Notary Public, State of Texas
My Commission Expires 04-01-2000

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

PATRICIA AND EZIL BIBBS, VANETTA KELSO, and HAMPTON UNIVERSITY	§	CIVIL ACTION NO. 5:99-CV-193-C
VS.	§	
CITY OF LUBBOCK, and POLICE CHIEF KEN WALKER, OFFICERS DAVID HOUSER, KEITH JOBE, BRIAN MCNEILL, R. HEARRON and MIKE OVERLAND, all individually and in their official capacities, UNKNOWN EMPLOYEES OF THE EMERGENCY MEDICAL SERVICES AT UNIVERSITY MEDICAL CENTER, all in their individual capacities	§	

AFFIDAVIT OF DAVID HOUSER

STATE OF TEXAS §

COUNTY OF LUBBOCK §

BEFORE ME, the undersigned authority, on this day personally appeared DAVID HOUSER, who after being by me duly sworn, upon his oath says:

"The facts set hereinbelow are true and correct. I am over eighteen (18) years of age, and I am under no legal disability that would prevent me from making this Affidavit.

1. I am DAVID HOUSER.

2. I am currently employed by the Lubbock Police Department.

3. I am a certified peace officer through TCLEOSE.

4. I have been employed by the Lubbock Police Department since 1988.

5. On November 16, 1998, I was working the evening shift 2:30 p.m. to 10:30 p.m.

6. On the date above, my supervising sergeant was Sergeant Roger Hearron. I was patrolling in the geographical zone of the City of Lubbock, Texas supervised by Roger Hearron.

7. Sometime in the afternoon of November 16, 1998, I was dispatched by police radio to assist Officer Keith Jobe.

8. I was dispatched to assist Officer Keith Jobe at the Wal-Mart store at 4215 South Loop 289.

9. I did not talk to Officer Jobe prior to arriving at the Wal-Mart parking lot.

10. Officer Jobe pointed out to me a van where suspects in a "pigeon drop" were located. I had no more specific facts.

11. Within approximately 3 minutes of my arrival, the van started to leave the Wal-Mart parking lot.

12. I watched the van turn eastbound on the South Loop access road. I was directly behind the van as it entered the loop access road.

13. As I was immediately behind the van, a detective instructed me to stop the van. I turned on my emergency rotating overhead lights. I noticed an occupant of the van begin to move furtively in the back seat of the van like he was hiding something, concealing something, moving something, or getting something either out from under a seat or from one of the occupants of the front seat. I could tell the individual was a rather large person. From my location behind the van, I could not tell anymore about the van's furtive occupant because there was some slight tint to the van windows.

14. The occupants of the van did not stop the vehicle in response to my emergency lights.

15. The van instead of pulling to the right and stopping in response to my emergency signals, kept going and changed to the left hand lane of the Loop 289 access road.

16. The van had several opportunities to stop but it did not. I informed the detectives that the van did not stop, via my police radio.

17. The occupants of the van refused to stop their vehicle in response to my emergency signals for a distance of about one mile.

18. The driver of the van had committed at least one misdemeanor offense in my presence by failing to stop and continuing to elude us.

19. Officer Jobe had activated his siren at least twice during the period of time we were following the van in an attempt to get the van to stop, which signal was ignored.

20. After my initial contact with the van driver, I found her to be a lady named Ms. Kelso. I asked Ms. Kelso to give me her driver's license. The driver's license Ms. Kelso gave me was unusual in its appearance.

21. Ms. Kelso would not roll the window of the van down a sufficient distance to converse. This was very unusual conduct. I asked her for the identification of the other two individuals in the van.

22. After I got the driver's license from the person who I found later to be Mr. Bibbs, I asked him if he was still living at the address reflected on his driver's license. The response to my question was 'we are not telling you anything else until we have spoken with legal counsel.' This also was very unusual conduct.

23. After I secured all three drivers' licenses from the van occupants, none of the licenses appeared to be authentic (the licenses were strange in appearance).

24. I had checked the drivers' licenses of the three individuals in the van and received no return from the police dispatch. The fact there was no return on the drivers' licenses often indicates drivers' licenses are not valid.

25. Officer Jobe and I further checked the drivers' licenses in a multi-state driver's license book we carry in our patrol cars and the drivers' licenses did not appear to be valid.

26. During the time we were checking the drivers' licenses, our shift sergeant, Sergeant Roger Hearron arrived and assumed command of the scene at the Holiday Inn.

27. Detective Overland directed a field observation, apparently, in order for a witness to view the two ladies from the van. We asked the female van occupants to stand outside the van during this procedure.

28. After I saw Detective Overland's car drive by the two ladies we had asked to get out of the van, we were directed by the detectives to place the van occupants in custody.

29. Prior to the direction to arrest the occupants of the van, I had no information that the van's occupants were related to Hampton University or were involved in any coaching endeavor with any university.

30. Shortly after Ms. Kelso was placed in the back of Officer Jobe's police car, I walked by the car to check on her and saw that she was vomiting. I had not seen anything that lead me to believe that she was ill or pregnant when she was out of the van and before she was placed in the police car.

31. Ms. Kelso made remarks about "your trying to kill my baby." I immediately called Sergeant Hearron. Even though Ms. Kelso did not request medical attention, Sergeant Hearron immediately called for an EMS attendant and the first responder vehicle arrived within a minute or two of the call.

32. After we got Ms. Kelso out of the police car, it appeared to me that Ms. Kelso tried to vomit and spit on

me and the EMS attendant. She did vomit on the EMS attendant's shoes.

33. I unhandcuffed Ms. Kelso in the ambulance and put the handcuffs in the front of her.

34. Professional medical assistance to assess Ms. Kelso's medical needs was requested by Sergeant Hearron less than three minutes from the time that I first became aware that Ms. Kelso was nauseated and perhaps needed medical attention.

35. After Ms. Kelso was left in the EMS ambulance, I had no more contact with her.

36. I took Mr. and Mrs. Bibbs to the police station in my police car.

37. Neither of the Bibbs indicated they had any medical needs (except for Mr. Bibbs requesting that he be handcuffed in the front). I did not observe any illness or injury to either of the Bibbs nor did they ask for any medical attention.

38. The fact that the occupants of the van were African-American did not influence or dictate any of my actions on November 16, 1998. Race had absolutely no role in any action or decision I took or made.

39. I did not know about any contracts involving the individual Plaintiffs, and I did not intend to interfere with any such contracts. I know of nothing about any contracts involving Hampton University.

40. I did not make any statement to anyone outside the course of my duties as a police officer.

41. Everything I did was in the furtherance of my duties as a police officer. It is not at all unusual for me to receive a request from either a detective or another part of the police department to detain or identify someone who is a suspect. I would be insubordinate in my duties if I refused such direction.

42. I did nothing for the purpose of causing Plaintiffs any emotional distress or physical discomfort.

43. I did not participate in any conspiracy.

44. I am aware of no conspiracy; I merely followed my official duties and obligations as a police officer. My actions were based upon the instructions I was given, my observations, and information given to me, all of which appeared to be objectively reasonable.

45. I acted in a good faith reasonable belief my actions were necessary and in accordance with the clearly established law as I understood it in the course of my training and official duties of a City of Lubbock police officer on November 16, 1998."

Further Affiant sayeth naught.

/s/ David Houser
DAVID HOUSER

SUBSCRIBED AND SWORN TO BEFORE ME by the said DAVID HOUSER, on this the 2nd day of September, 1999, to certify which witness my hand and seal of office.

/s/ Kay C. Johnson
Notary Public, State of Texas

[SEAL]
KAY C. JOHNSON
Notary Public, State of Texas
My Commission Expires 04-01-2000

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

PATRICIA AND EZIL BIBBS VANETTA KELSO, and HAMPTON UNIVERSITY	§	CIVIL ACTION NO. 5:99-CV-193-C
Plaintiffs	§	
V.	§	
CITY OF LUBBOCK, and POLICE CHIEF KEN WALKER, OFFICERS DAVID HOUSER KEITH JOBE, BRIAN MCNEILL, R. HEARRON, and MIKE OVERLAND, all individually and in their official capacities, UNKNOWN EMPLOYEES OF THE EMERGENCY MEDICAL SERVICES AT UNIVERSITY MEDICAL CENTER all in their individual capacities	§	
Defendants	§	

AFFIDAVIT OF KEITH JOBE

STATE OF TEXAS §

COUNTY OF LUBBOCK §

BEFORE ME, the undersigned authority, on this date personally appeared KEITH JOBE who after being duly sworn upon his oath did depose and say:

"1. My name is Keith Jobe. I am a named Defendant in Civil Action 5:99-CV-193-C now pending in the U.S. District Court Northern District of Texas Lubbock Division.

2. On November 16, 1998, I was employed as a police officer for the City of Lubbock. I was on duty that day and participated in the investigation and the arrest of the Plaintiffs, Vanetta Kelso, Patricia Bibbs and Ezil Bibbs in this case.

3. Attached hereto as Exhibit "A" and incorporated herein by reference is my case report and supplemental case report relative to this case. I have reviewed the reports and the facts stated therein are true and correct.

4. Attached hereto as Exhibit "B" and incorporated herein by reference is the record of calls to the dispatcher including calls from my unit 231 A. I have used this record to refresh my recollection as to the sequence of events and the time interval between events.

5. I was dispatched to the Hester home at 4:18 p.m. on November 16. I arrived at their home at 4:24 p.m. I interviewed Ms. Hester. During the interview I obtained a description of the suspects.

6. Mr. and Mrs. Hester were convinced that she had been the target of some type of criminal activity. I had never heard of the pigeon drop scam, so I did not know how to characterize the events that Ms. Hester had described to me.

7. I went to Wal-Mart. My first action on arrival was to telephone the detective division. I spoke to Mike Overland and reported the events described to me by Ms. Hester. Detective Overland told me that, based on that report, Ms. Hester had been the target of a pigeon drop scam.

8. I scouted the parking lot. I identified possible suspects at about 4:52 p.m. I asked two of the Plaintiffs if they had reported finding a purse. Their reaction ruled out the possibility that their activity was not fraudulent if they were the actors described by Ms. Hester.

9. Ms. Kelso matched the description as to height, weight, gender, color of clothing, race and she was physically located near the place of the criminal activity. Ms. Bibbs seemed to fit the description of the other actor except as to clothing.

10. I called for backup at 4:54 p.m. and set up surveillance of the suspects.

11. After Officer Houser arrived we began to communicate on another channel.

12. When the suspects departed the parking lot, Officer Houser was directly behind their van and I drove directly behind Officer Houser's unit. We asked Detective Overland for instructions and he told us to stop them and obtain identification. We had already reported to Detective Overland that the van was a rental vehicle.

13. I activated my visual signals just after passing the intersection of Memphis and South Loop 289 access. I also activated the audible signal, the siren, periodically after the suspects refused to stop in response to the visual

signals. Officer Houser had activated his visual signals at the same time.

14. A few minutes after 5:00 p.m. the suspects were stopped at the Holiday Inn parking lot. The drivers' licenses were called in at 5:14 p.m. We were told by Detective Overland to effect the arrest of the three individuals shortly after 5:30 p.m. because we called for an additional unit for transport at 5:36 p.m., before it was decided that the Bibbs could be transported in a single vehicle since they were married. Vanetta Kelso was placed in my unit and I went to help with the rental van.

15. 1 did not suspect Ms. Kelso was either pregnant or sick until I was told that she had vomited in my unit. An EMS unit was dispatched at 5:45 p.m. which was only a very short time after she vomited.

16. None of my acts that day were motivated by the fact that Plaintiffs were African-American. I was respectful at all times. I was not unkind to anyone.

FURTHER AFFIANT SAITH NOT.

/s/ Keith Jobe
KEITH JOBE

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public in and for the state of Texas, on the 31 day of August, 1999.

/s/ Kathy Fowler
[SEAL]
KATHY A FOWLER
Notary Public, State of Texas
My Commission Expires 06-14-2001

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

PATRICIA AND EZIL BIBBS, VANETTA KELSO, and HAMPTON UNIVERSITY	§	CIVIL ACTION NO. 5:99-CV-193-C
VS.	§	
CITY OF LUBBOCK, and POLICE CHIEF KEN WALKER, OFFICERS DAVID HOUSER, KEITH JOBE, BRIAN MCNEILL, R. HEARRON and MIKE OVERLAND, all individually and in their official capacities, UNKNOWN EMPLOYEES OF THE EMERGENCY MEDICAL SERVICES AT UNIVERSITY MEDICAL CENTER, all in their individual capacities	§	

AFFIDAVIT OF BRIAN McNEILL

STATE OF TEXAS §

COUNTY OF LUBBOCK §

BEFORE ME, the undersigned authority, on this day personally appeared BRIAN McNEILL, who after being by me duly sworn, upon his oath says:

"The facts set hereinbelow are true and correct. I am over eighteen (18) years of age, and I am under no legal disability that would prevent me from making this Affidavit.

1. I am BRIAN McNEILL.

2. I am employed as a detective in the property crimes division of the City of Lubbock Police Department.

3. I am a corporal. I have been a property crimes detective since 1989. As a property crimes detective, I investigate burglaries, thefts, criminal mischief and similar crime.

4. On November 16, 1998, as part of my official duties as a detective, I was assigned the duty to help Detective Mike Overland investigate a "pigeon drop" scheme which was occurring at the South Loop 289 Wal-Mart parking lot.

5. I became aware that Officers Jobe and Houser had identified a person or persons who matched the description given them by an apparent victim as being involved in this possible "pigeon drop" crime.

6. The crime at the South Loop 289 Wal-Mart was in Detective Overland's geographical beat. Detective Overland was in charge.

7. In November 1998 I was a detective patrolman and Detective Overland was a detective corporal with approximately 15 more years experience than I had so he was the senior officer.

8. I heard Detective Overland direct Officers Houser and Jobe to stop the vehicle in which the suspects matching the description were located.

9. I got on the police radio and asked Officer Jobe where they had stopped. Officer Jobe replied over the police radio that the suspects were not stopping.

10. When I arrived Officers Jobe, Houser and Sergeant Hearron were present in marked police cars. Both Officers Jobe and Houser were in police uniform.

11. I arrived at the South Loop 289 Holiday Inn in daylight and in an open public parking lot area.

12. After I arrived, I did view the van occupants' drivers' licenses. I believed them to be fictitious or counterfeit. The drivers' licenses were miscut and not properly aligned in their laminating substance.

13. When we checked the van occupants' drivers' licenses through the police radio, the dispatchers reported no return, which was suspicious.

14. I received information via police radio a field observation was to be accomplished.

15. Within 15 minutes after I arrived, Detective Overland drove his unmarked police car close to the suspects and informed me via police radio that the victim had identified Ms. Kelso.

16. Detective Mike Overland directed the arrest of all three Plaintiffs after the field identification.

17. I did not handcuff any of the Plaintiffs. That act was accomplished by the uniformed officers.

18. I am well familiar with Detective Mike Overland's competence. I have worked under his tutelage for several years. In my judgment he is a competent and reasonable peace officer, and experienced detective.

19. All that I observed from the time I heard on the police radio and observed from the three individuals who were the van occupants reinforced my belief that Detective Overland had made the right decision in directing Mr. and Mrs. Bibbs and Ms. Kelso be arrested.

20. I did not participate in any conspiracy.

21. I am aware of no conspiracy; I merely followed my official duties and obligations as a police officer. Based upon the instructions I was given, all of which from my observations and the information given to me, appeared to be objectively reasonable.

22. On November 16, 1998, I was not aware of any contractual rights or obligations pertaining to the Plaintiffs.

23. The fact that the occupants of the van were African-American did not influence or dictate any of my actions on November 16, 1998. Race had absolutely no role in any action or decision I took or made.

24. I did not know about any contracts involving the individual Plaintiffs, and I did not intend to interfere with any such contracts. I knew nothing concerning contracts involving Hampton University.

25. I did not make any statement to anyone outside the course of my duties as a police officer.

26. Everything I did was in the furtherance of my duties as a police officer. It is not at all unusual for me to receive a request from another detective or other police department personnel to detain or identify someone who is a suspect. I would be insubordinate in my duties if I refused such direction. I am aware "pigeon drops" occur quickly and often the criminals who do such crimes are gone from a city almost immediately. Attempts to apprehend such individuals require rapid police response.

27. I did nothing for the purpose of causing Plaintiffs any emotional distress or physical discomfort.

28. I acted in a good faith reasonable belief my actions were necessary and in accordance with the clearly established law as I understood it in the course of my training and official duties of a City of Lubbock police officer on November 16, 1998."

Further Affiant sayeth naught.

/s/ Brian McNeill
BRIAN McNEILL

SUBSCRIBED AND SWORN TO BEFORE ME by the said BRIAN McNEILL, on this the 2nd day of September, 1999, to certify which witness my hand and seal of office.

/s/ Kay C. Johnson
Notary Public, State of Texas

[SEAL]
KAY C. JOHNSON
Notary Public, State of Texas
My Commission Expires 04-01-2000

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

PATRICIA AND EZIL BIBBS VANETTA KELSO, and HAMPTON UNIVERSITY Plaintiffs v CITY OF LUBBOCK, and POLICE CHIEF KEN WALKER, OFFICERS DAVID HOUSER KEITH JOBE, BRIAN MCNEILL, R. HEARRON, and MIKE OVERLAND, all individually and in their official capacities, UNKNOWN EMPLOYEES OF THE EMERGENCY MEDICAL SERVICES AT UNIVERSITY MEDICAL CENTER all in their individual capacities, Defendants	)	CIVIL ACTION NO. 5:99-CV-193-C

STATE OF TEXAS COUNTY OF LUBBOCK	)	**AFFIDAVIT OF MIKE OVERLAND**

BEFORE ME, the undersigned authority, on this date personally appeared Mike Overland who after being duly sworn upon his oath did depose and say:

"1. My name is Mike Overland.

2. I was a defendant in Civil Action 5:99-CV-193-C; Patricia and Ezil Bibbs, Vanetta Kelso, and Hampton University v. City of Lubbock, et al.

3. On November 16, 1998, I was serving as a detective in the crime against property division in the Lubbock Police Department.

4. I was the individual who directed the patrol officers to stop the Plaintiffs for investigation and identification.

5. I was the individual who made the decision to arrest Patricia Bibbs, Ezil Bibbs and Vanetta Kelso and I directed the officers at the Holiday Inn parking lot to effect the arrests.

FURTHER AFFIANT SAITH NOT.

/s/ Michael Overland
MIKE OVERLAND

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public in and for the state of Texas, on the 1 day of September, 1999.

[SEAL] KATHY A. FOWLER
Notary Public, State of Texas
My Commission Expires
06-14-2001

/s/ Kathy Fowler

APPENDIX F

LUBBOCK - POLICE - DEPARTMENT

-Case Report-

Reported Date: 11/16/98	Time: 16:18	Case: 98-046570 (000) Page: 1
Code: 31.03 PC	Crime: ATT. THEFT	Class: 060490
Occurrence Date: 11/16/98	Day: MONDAY	Time: 15:15
Status:	Closing Officer:	

Location: 4215 S. LOOP 289, LU WAL MART SUPER CENTER RD: 62

INVOLVED PERSONS

VICTIM-01: HESTER ELENITA
3520 57TH ST., LU
DOB: 11/03/55
Race: A Sex: F

Apt: State: TX Zip: Phone: 796-1073 Adu/Juv: A Bld:

POB: Hair: Eye: Hgt: Wgt:

Business Name: Phone:

SUSPECTS/ARRESTS

SUSPECT-01: – unnamed –

CRIME ANALYSIS ELEMENTS

Race: B	Sex: F	Age: 40	Hgt: 508
Additional Description:	AGE 40+-		

SUSPECT-02: – unnamed –

CRIME ANALYSIS ELEMENTS

Race: B	Sex: F	Age: 40	Hgt: 508 Wgt: 200
Shirt: BRN SUIT*	Other: AGE 40+-		

Additional Description: *TYPE OR COAT

MO FACTORS

Area:	Structure:	Actions:
PARKING LOT	RETAIL GOODS	SEEKING ASSISTANCE

Evidence: NONE

NARRATIVE

ITEM QTY	DESCRIPTION	VALUE
Miscellaneous	1 SEE NARRATIVE OF SUPPLEMENT	

I RECEIVED A POLICE RADIO CALL TO 3520-57TH IN REFERENCE TO AN ATTEMPTED THEFT.

V1 STATED THAT SHE WAS APPROACHED IN THE PARKING LOT, 4215-S. LOOP 289, BY S1 AND S2. V1 FELT LIKE S1 AND S2 WERE ATTEMPTING TO "SCAM" HER.

SEE SUPPLEMENT FOR DETAILS.

Report Control Information -Page 1-

Reporting Officer:
JOBE KEITH — Number: P00176
Date: 11/16/98 — Time: 16.18
Typed by: PONCIANO
Number: 030332
Date:11/17/98 — Time: 01:42
Approving Officer:
Ward R — Number: P00990
Date: 11/18/98 — Time: 13:49

LUBBOCK - POLICE - DEPARTMENT

-Case Supplement Report-

Reported Date: 11/16/98	Time: 16:18	Case: 98-046570 (001) Page 1
Code: 31.03 PC	Crime: ATT. THEFT	Class: 060490
Occurrence Date: 11/16/98	Day: MONDAY	Time: 15:15
Status:	Closing Officer:	P00176 JOBE KEITH
Location:	4215 S. LOOP 289, LU WAL MART SUPER CENTER	RD: 62

SUSPECTS/ARRESTS

ARRESTED-01: KELSO VANETTA ROBINSON

DOB: 10/15/62

Race: B Sex: F

3418 LANSING AV., KNOXVILLE

Apt: State: TN Zip: Phone: Adu/Juv: A
POB: Hair: BLK Hgt: 510 Wgt: 210
KNOXVILLE Eye: BRO Bld:
TN
Business Name: HAMPTON UNIVERSITY/*
*VIRGINIA/ASST. COACH Phone:

Driver License: 54699697 TN Social Security:
CII: FBI: 411234065
Booking Number:

000141720

CRIME ANALYSIS ELEMENTS

Age: 36	Complexion:	Coat:	Pants:	Shirt:
	DARK	BLK	BRN	BRN

ARRESTED-02: BIBBS PATRICIA CAGE
DOB: 08/28/50 Race: B Sex: F

1449 HWY 80 E, CHOUDRANT
Apt: State: LA Zip: Phone:
757 838-2817 Adu/Juv: A
POB: Hair: BLK Hgt: 509 Wgt: 173
MONROE LA Eye: BRO Bld:
Business Name: BASKETBALL COACH Phone:

Driver License: 003075493 LA Social Security:
CII: FBI: 434861221
Booking Number:
000141718

CRIME ANALYSIS ELEMENTS

Age: 48	Complexion: MEDIUM	Pants: B L U / WHT	Shirt: B L U / WHT

ARRESTED-03: BIBBS EZIL JR
DOB: 06/30/52 Race: B Sex: M

1449 HWY 80 E, CHOUDRANT
Apt: State: LA Zip: Phone:
Adu/Juv: A
POB: Hair: BLK Hgt: 602 Wgt: 255
NEW ORLNS LA Eye: BRO Bld:

Business Name: RETIRED Phone

Driver License: 003364723 LA Social Security:
CII: FBI: 437868799
Booking Number:
000141717

CRIME ANALYSIS ELEMENTS

Age: 46	Complexion: DARK	Pants: B L U / WHT	Shirt: B L U / WHT

-Case Report-

Reported Date: 11/16/98	Time: 16:18	Case: 98-046570 (001) Page: 2
Code: 31.03 PC	Crime: ATT. THEFT	Class: 060490

SUSPECT VEHICLES

ARRESTED-01: Year:97	License: VHN25H	State: TX	Type: A	Expires: 99
	Make: CHEV	Model: VAN	Style:	Color: WHI

Identifiers: VIN: 1GNDX03E 2VD194901	Disposition: LUBBOCK WRECKER

NARRATIVE

I RECEIVED A POLICE RADIO CALL TO RESPOND TO 3520-57TH IN REFERENCE TO A POSSIBLE THEFT OR "SCAM" THAT HAD OCCURRED IN THE PARKING LOT AT 4215 – SOUTH LOOP 289, WALMART SUPER-CENTER.

UPON ARRIVAL AT 3520-57TH, I WAS MET BY RANDY HESTER, HUSBAND OF THE VICTIM. MR. HESTER STATED TO ME THAT HE HAD BEEN ON THE PHONE WITH CAPT. WARD AND THAT HIS WIFE NEEDED TO

MAKE A POLICE REPORT ABOUT AN INCIDENT THAT OCCURRED AT WALMART. MR. HESTER LED ME INTO THE LIVING ROOM OF HIS RESIDENCE WHERE I SPOKE WITH ELENITA HESTER. MRS. HESTER RELATED THE FOLLOWING INFORMATION TO ME.

E. HESTER SAID THAT SHE WAS IN THE EXPRESS CHECKOUT LANE INSIDE WALMART WHEN A BLACK FEMALE, WHO WAS BEHIND HER, BEGAN A CONVERSATION WITH E. HESTER. E. HESTER SAID THAT THE CONVERSATION CONSISTED OF COOKING A PHILLIPINO FOOD. E.HESTER IS FROM THE PHILLIPINES. E. HESTER CHECKED OUT HER ITEMS AND EXITED THE STORE AND WALKED TO HER VEHICLE. AS HESTER WAS GETTING INTO HER CAR SHE SAID THAT THE SAME BLACK FEMALE APPROACHED HER AND ASKED HER IF THIS WAS HER PURSE. HESTER SAID THAT THE FEMALE TOLD HER THAT IT WAS FOUND BY HER CAR. HESTER TOLD THE FEMALE THAT IT DID NOT BELONG TO HER. HESTER SAID SHE LOOKED INSIDE THE PURSE, WHICH SHE DESCRIBED TO ME AS A LARGE OVERSIZED SUNGLASS TYPE CASE, AND FOUND A PIECE OF PAPER WITH SOME WRITING ON IT. HESTER SAID THE WRITING SAID, " DEAR JOSE, WE DID IT AGAIN HERE IS YOUR $150,000 BUT BE CAREFUL BECAUSE THE POLICE ARE ON TO US". HESTER SAID THAT THERE WAS ALSO A ZIPPERED POUCH ON THE INSIDE OF THE PURSE. HESTER UNZIPPED THE COMPARTMENT AND DISCOVERED WHAT SHE DESCRIBED AS A LARGE STACK OF MONEY. HESTER STATED THAT SHE DID NOT KNOW HOW MUCH

MONEY WAS IN THE STACK. HESTER AND THE WOMAN CONTINUED TALKING WHEN HESTER NOTICED ANOTHER BLACK FEMALE WALKING AROUND IN THE PARKING LOT.

HESTER DESCRIBED THE BLACK FEMALE AS BEING WELL DRESSED IN A BROWN LOOKING SUIT OR A BROWN LONG COAT. HESTER SAID THAT SHE THOUGHT THAT THE LADY WAS LOOKING FOR SOMETHING AND MIGHT BE THE OWNER OF THE FOUND PURSE. HESTER SAID THAT SHE AND THE FIRST BLACK FEMALE ASKED THE OTHER LADY IF THE PURSE AND MONEY BELONGED TO HER. THE SECOND FEMALE SAID THAT IT DID NOT BELONG TO HER. HESTER SUGGESTED TO THE FIRST FEMALE THAT THEY SHOULD TURN IT INTO WALMART. ONE OF THE FEMALES TOLD HER NOT TO DO THAT BECAUSE WALMART WOULD KEEP THE MONEY. HESTER TOLD ME THAT SHE WAS GETTING VERY NERVOUS AT THIS POINT. HESTER GOT INTO HER CAR AND LEFT THE SCENE.

AFTER GETTING THIS INFORMATION FROM HESTER I HEADED TO WALMART, 4215-S. LOOP, TO ATTEMPT TO LOCATE THE TWO BLACK FEMALES. WHILE ENROUTE I WAS ADVISED TO CONTACT DET. OVERLAND. WHEN I ARRIVED AT WALMART I WENT TO A PAY PHONE AND SPOKE WITH DET. OVERLAND, WHO TOLD ME THAT THIS WAS GOING TO BE A "PIGEON DROP" SCAM, I SAID I WOULD CONTACT HIM IF I LOCATED ANYTHING. I BEGAN TO DRIVE IN THE PARKING LOT. AS I WAS DRIVING NORTHBOUND THROUGH THE LOT I SAW TWO BLACK FEMALES SITTING IN A WHITE VAN. THE DRIVER OF

THE VAN WAS WAVING AT ME. I PULLED ONTO THE PARKING ISLE THAT THEY WERE ON AND APPROACHED THE VEHICLE ON THE PASSENGER SIDE. I ASKED THE TWO FEMALES, WHO WERE BOTH BLACK, IF THEY HAD CALLED TO REPORT A LOST PURSE. THE TWO FEMALES LOOKED VERY SURPRISED AND LOOKED AT EACH OTHER AND THE PASSENGER SAID THAT THEY DID NOT CALL. I GOT BACK INTO MY PATROL CAR AND WENT TO THE NORTH END OF THE PARKING LOT SO I WAS ABLE TO KEEP THE WHITE VAN INSIGHT. THE DRIVER OF THE VAN MATCHED THE CLOTHING DESCRIPTION WHICH WAS GIVEN TO ME BY E.HESTER. I NOTIFIED DISPATCH TO CONTACT DET. OVERLAND AND LET HIM KNOW THAT I HAD FOUND THE POSSIBLE SUSPECTS. DISPATCH ADVISED ME THAT DET. OVERLAND WOULD BE ENROUTE TO MY LOCATION. I ALSO REQUESTED A BACK-UP UNIT. OFC. HOUSER RESPONDED TO MY LOCATION AT WHICH TIME I BRIEFED HIM ON THE SITUATION. AS I WAS WATCHING THE VEHICLE I SAW A BLACK MALE APPROACH THE VEHICLE AND GET INTO THE SLIDING RIGHT PASSENGER DOOR. THE VAN THEN BACK OUT AND DROVE WESTBOUND IN THE PARKING LOT IN FRONT OF THE MAIN DOORS. I FOLLOWED THE VEHICLE AND OFC. HOUSER WAITED AT THE LOOP ENTRANCE. THE VAN THEN DROVE TOWARDS THE LOOP ENTRANCE AND TURNED RIGHT ONTO THE LOOP ACCESS ROAD, EASTBOUND. DURING THIS TIME I WAS RELAYING THE DIRECTION OF TRAVEL BY RADIO TO DET. MCNEILL AND DET. OVERLAND. I WAS INSTRUCTED BY THE DETECTIVES TO INITIATE

A TRAFFIC STOP ON THE VEHICLE. OFC HOUSER WAS DIRECTLY BEHIND THE VEHICLE. MYSELF AND OFC. HOUSER ACTIVATED OUR EMERGENCY LIGHTS ON OUR PATROL CARS AT 3500 SOUTH LOOP 289.

THE VAN CONTINUED TO TRAVEL EASTBOUND IGNORING THE EMERGENCY LIGHTS. THE VAN STOPPED IN THE RIGHT LANE AT THE RED LIGHT AT SOUTH LOOP 289 AND INDIANA AVENUE, STILL SHOWING NO SIGNS OF PULLING OVER. THE TRAFFIC LIGHT CHANGED TO GREEN AND THE VAN CONTINUED EAST ON THE ACCESS ROAD. THE VAN FINALLY PULLED OVER IN THE 3200 BLOCK OF SOUTH LOOP 289 IN THE HOLIDAY INN PARKING LOT, AFTER BEING FOLLOWED FOR ABOUT 1/2 MILE WITH THE EMERGENCY LIGHTS ACTIVATED.

OFC. HOUSER MADE CONTACT WITH THE DRIVER WHILE I WAS RELAYING THIS INFORMATION TO DET.'S MCNEILL AND OVERLAND. ALL PERSONS IN THE VAN WERE IDENTIFIED AND CHECKED FOR WARRANTS THROUGH DISPATCH. OFC. HOUSER RELAYED TO ME THAT THE DRIVER SEEMED EXTREMELY NERVOUS AND WAS GIVING HIM EVASIVE ANSWERS TO HIS QUESTIONS.

DET. MCNEILL ARRIVED ON SCENE AND THE DET. OVERLAND ARRIVED SHORTLY AFTER. DET. OVERLAND THEN LEFT THE SCENE TO GO AND PICK UP E. HESTER FOR A FIELD IDENTIFICATION. DET. OVERLAND RETURNED WITH E. HESTER AND PARKED SO AS THE SUBJECTS IN THE VAN WOULD NOT BE ABLE TO SEE HER, E. HESTER.

I WENT TO THE DRIVER'S SIDE OF THE VAN AND ASKED V. KELSO TO STEP OUT AND WALK WITH ME TO MY PATROL CAR. OFC HOUSER WENT TO THE PASSENGER SIDE AND GOT P.BIBBS. BOTH KELSO AND BIBBS WERE ESCORTED TO THE REAR OF MY PATROL CAR AND POSITIONED WHERE E.HESTER COULD SEE BOTH SUBJECTS. I WAS ADVISED BY DET. OVERLAND THAT KELSO HAD BEEN POSITIVELY IDENTIFIED BY HESTER AND THAT P.BIBBS COULD BE THE OTHER INVOLVED PARTY. AT THAT POINT DET. OVERLAND ADVISED ME TO TAKE ALL OF THE OCCUPANTS IN THE VAN INTO CUSTODY AND TRANSPORT THEM TO THE DETENTION FACILITY. I PLACED V.KELSO IN HANDCUFFS AND INTO THE BACKSEAT OF MY PATROL CAR. OFC. HOUSER TOOK CUSTODY OF P.BIBBS AND PLACED HER IN HIS PATROL CAR. I THEN PLACED HANDCUFFS ON E.BIBBS, THE THIRD PERSON IN THE VAN, AND PLACED HIM IN THE BACKSEAT OF SGT.HEARRON'S PATROL CAR.

I NOTIFIED DISPATCH TO SEND ME A WRECKER TO IMPOUND THE VAN. AS I BEGAN WRITING OUT AN IMPOUND SLIP FOR THE VAN, OFC. HOUSER ADVISED ME THAT V.KELSO HAD VOMITED IN THE BACK SEAT OF MY PATROL CAR AND THAT HE CALLED FOR EMERGENCY MEDICAL SERVICES. E.M.S ARRIVED ON THE SCENE AND TRANSPORTED V.KELSO TO THE UNIVERSITY MEDICAL CENTER EMERGENCY ROOM FOR AN EVALUATION. DET. OVERLAND RETURNED TO THE SCENE AND STATED THAT EVERYTHING INSIDE THE VAN WOULD BE TAKEN INTO CUSTODY AND TRANSPORTED TO THE

POLICE DEPARTMENT FOR INVENTORY. I ASSISTED DET. OVERLAND IN REMOVING THE CONTENTS OF THE VAN AND PLACING THEM IN THE TRUNK OF DET. OVERLAND'S CAR. I THEN LEFT THE SCENE AND WENT TO UMC E.R. TO WATCH V.KELSO. CPL. BRYANT ARRIVED AT UMC E.R. FOR RELIEF. CPL. BRYANT TOOK CUSTODY OF V.KELSO AND I LEFT TO GO TO THE POLICE DEPARTMENT TO BEGIN MY REPORTS.

Report Control Information

Reporting Officer:
JOBE KEITH — Number: P00176
Date: 11/16/98 — Time: 16.20
Typed by: PONCIANO
Number: 030332
Date:11/17/98 — Time: 01:47
Approving Officer:
DIAZ E — Number: P00505
Date: 11/17/98 — Time: 04:35

LUBBOCK - POLICE - DEPARTMENT

-Case Supplement Report-

Page: 1

Reported
Date: 11/16/98 Time: 16:18 Case: 98-046570 (002)

Code: 31.03 PC	Crime: ATT. THEFT	Class:
Occurrence Date: 11/16/98	Day: MONDAY	Time: 15:15
Status:	Closing Officer:	P00176 JOBE KEITH

Location: 4215 S. LOOP 289, LU WAL MART SUPER CENTER RD: 62

NARRATIVE

P.D. RADIO CALL TO 4215 S. LOOP, RE: ASSIST 231A, PLT. K JOBE. PLT. K. JOBE ADVISED THAT THE SUSPECTED VAN WAS LEAVING THIS ADDRESS, AND HE WAS INSTRUCTED TO OBSERVE AND FOLLOW IT.

I FOLLOWED THE VEHICLE EAST BOUND ON THE S. LOOP E.B. ACCESS ROAD TOWARDS INDIANA. I WAS ADVISED BY DET. MCNEIL TO STOP THE SUSPECT VEHICLE. I ACTIVATED MY EMERGENCY OVERHEAD LIGHTS, AND THE VEHICLE PULLED INTO THE NORTH PARKING LOT OF 3201 S. LOOP 289.

VANETTA ROBINSON KELSO WAS THE OPERATOR OF THE VEHICLE. I APPROACHED THE DRIVER'S DOOR, AND REQUESTED HER D.L. AND EVIDENCE OF FINANCIAL RESPONSIBILITY. SHE PROVIDED A TENNESSEE D.L.

VANETTA REQUESTED TO KNOW WHY SHE WAS STOPPED, AND I ADVISED HER THAT THE VEHICLE AND OCCUPANTS WERE SUSPECTS IN A CRIME.

I TOOK VANETTA'S D.L. TO PTL. K. JOBE, AND THEN WENT BACK TO THE VEHICLE TO OBTAIN I.D. ON THE OTHER OCCUPANTS.

VANETTA WOULD ONLY OPEN THE DRIVER'S WINDOW FAR ENOUGH TO PASS THE D.L.'S THROUGH, AND REFUSED TO ANSWER ANY QUESTIONS ABOUT CHANGE OF ADDRESS OR PHONE NUMBERS. HER RESPONSES WERE THAT "UNTIL SHE SPOKE WITH LEGAL COUNSEL, SHE WOULD NOT ANSWER ANY QUESTIONS." THIS SEEMED VERY EVASIVE TO ME, AND UNCOOPERATIVE.

I EXPLAINED TO THEM (THE OCCUPANTS) EVERYTHING I KNEW, AND THEY SAID THEY WERE HERE ONLY FOR A BASKETBALL GAME.

I ATTEMPTED TO SPEAK WITH PATRICIA BIBBS, THROUGH THE DRIVER'S WINDOW, OPEN ONLY ABOUT 1/2", AND WAS TOLD BY VANETTA THAT THEY NEEDED LEGAL COUNSEL BEFORE THEY WOULD ANSWER ANY QUESTIONS.

PATRICIA BIBBS SAID THAT THEY WERE HERE FOR "BUSINESS RELATED" REASONS.

Report Control Information -Page 1-

Reporting Officer:
HOUSER
Number: P00108
Date: 11/16/98
Time: 16:54
Typed by: PONCIANO
Number: 030332
Date:11/17/98
Time: 02:09

Approving Officer:
HEARRON R
Date: 11/17/98

Number: P00533
Time: 04:35

LUBBOCK - POLICE - DEPARTMENT

-Case Supplement Report-

Page: 1

Reported Date: 11/16/98	Time: 16:18	Case: 98-046570 (003)
Code: 31.03 PC	Crime: ATT. THEFT	Class:
Occurrence Date: 11/16/98	Day: MONDAY	Time: 15:15
Status:	Closing Officer:	P00176 JOBE KEITH
Location: 4215 S. LOOP 289, LU WAL MART SUPER CENTER		RD: 62

NARRATIVE

SOURCE OF ACTIVITY/BACKGROUND:
RADIO

OFFICER'S OBSERVATION/INVESTIGATION:

I HEARD OFFICER'S K. JOBE AND D. HOUSER ATTEMPTING TO STOP A THEFT SUSPECT VEHICLE

LEAVING THE WAL-MART STORE ON S. LOOP 289. I MONITORED THE RADIO UNTIL I HEARD THEM STOP THE VEHICLE IN 3000 S. LOOP 289. I ALSO OVERHEARD DET. MCNEIL CALLED TO THE SCENE.

I THEN DROVE TO THE LOCATION, WHICH WAS IN FRONT OF THE HOLIDAY INN, AND OBSERVED THE ABOVE THREE OFFICERS TALKING TO THE OCCUPANTS OF A WHITE CHEV. VAN.

WE THEN WAITED UNTIL DET. M. OVERLAND BROUGHT A WITNESS TO THE SCENE TO IDENTIFY POSSIBLE SUSPECTS. UPON DETECTIVE OVERLAND'S DIRECTIVE, ALL THREE OCCUPANTS OF THE VAN WERE HANDCUFFED AND PLACED IN SEPARATE CARS. MR. BIBBS WAS PLACED IN MY CAR. I STOOD BACK AND OBSERVED ALL THREE ARRESTEE'S. ANOTHER SUBJECT, WALTER MEBANE, APPROACHED AND WAS PERMITTED TO TALK TO MRS. BIBBS. AT THIS TIME MRS. KELSO STARTED THROWING UP IN K. JOBE'S CAR. I ASKED HER IF SHE NEEDED TO GET OUT AND STAND UP. SHE NEVER ANSWERED. I INSTRUCTED OFFICER HOUSER TO CALL EMS. MRS. KELSO WAS SUBSEQUENTLY TRANSPORTED TO U.M.C. FOR TREATMENT/EXAMINATION.

I THEN DROVE TO L.P.D. TO ASSIST THE ABOVE OFFICERS. OFFICER K. JOBE WAS SENT TO U.M.C. TO GUARD MRS. KELSO, BUT I SUBSEQUENTLY RELIEVED HIM OF THAT DUTY SO HE COULD START HIS REPORT AND CLEAN UP HIS CAR. I SENT CPL. BRYANT TO THE HOSPITAL WITH INSTRUCTIONS TO

BRING MRS. KELSO TO DETENTION CTR. FOR BOOKING AFTER SHE WAS RELEASED FROM UMC.

Report Control Information -Page 1-

Reporting Officer:
HEARRON R — Number: P00533
Date: 11/16/98 — Time: 16:50
Typed by: PONCIANO
Number: 030332
Date:11/17/98 — Time: 02:17
Approving Officer:
HUDGENS SCOTT — Number: P00502
Date: 11/17/98 — Time: 04:36

LUBBOCK - POLICE - DEPARTMENT

-Case Supplement Report-

Page: 1

Reported Date: 11/16/98	Time: 16:18	Case: 98-046570 (004)
Code: 31.03 PC	Crime: ATT. THEFT	Class:
Occurrence Date: 11/16/98	Day: MONDAY	Time: 15:15
Status:	Closing Officer:	P00176 JOBE KEITH

Location: 4215 S. LOOP 289, LU RD: 62
WAL MART SUPER
CENTER

NARRATIVE

POLICE RADIO CALL TO 801 LOUISVILLE, UMC ER, REF: ASSIST OFFICER.

UPON ARRIVAL, I MET WITH PTL. K. JOBE. PTL. K. JOBE ADVISED THAT VANETTA KELSO WAS IN CUSTODY AT UMC ER. I WAS INSTRUCTED TO STAND BY WITH VANETTA KELSO, AND TRANSPORT HER TO THE PD UPON HER RELEASE.

I STOOD BY WITH VANETTA KELSO FROM ABOUT 1830 HRS, UNTIL HER RELEASE AT ABOUT 2204 HRS. I TRANSPORTED VANETTA KELSO TO THE PD DETENTION FACILITY. VANETTA KELSO WAS BOOKED, AND THEN RELEASED FROM THE PD.

Report Control Information -Page 1-

Reporting Officer:
BRYANT, D Number: P00339
Date: 11/16/98 Time: 18:30
Typed by: PONCIANO
Number: 030332
Date:11/17/98 Time: 02:23
Approving Officer:
QUINTANA VICT Number: P00532
Date: 11/17/98 Time: 04:37

LUBBOCK - POLICE - DEPARTMENT

-Case Supplement Report-

Page: 1

Reported Date: 11/16/98	Time: 16:18	Case: 98-046570 (005)
Code: 31.03 PC	Crime: ATT. THEFT	Class:
Occurrence Date: 11/16/98	Day: MONDAY	Time: 15:15
Status: TH THEFT UNIT	Closing Officer:	P00176 JOBE KEITH
Location: 4215 S. LOOP 289, LU WAL MART SUPER CENTER		RD: 62

NARRATIVE

DETECTIVES OVERLAND AND MCNEILL WERE SENT TO WAL-MART (LOOP 289 & QUAKER) AROUND 4:50 PM (11-16-98) TO START SURVEILLANCE DUE TO A REPORTED ATTEMPTED THEFT ON THE PARKING LOT. THE THEFT DESCRIBED IS KNOWN AS A "PIGEON DROP." THE PHRASE REFERS TO A FAIRLY COMMON CRIME WHERE AN INDIVIDUAL, OFTEN A FOREIGN OR ELDERLY PERSON IS APPROACHED ABOUT A LARGE SUM OF MONEY BEING FOUND.

THE VICTIM IS CONVINCED IF THEY COME UP WITH A PERCENTAGE OF THE AMOUNT FOUND (IN CASH) AND IT IS HELD AS A DEPOSIT WITH MANAGEMENT OR AN ATTORNEY. THE FOUND MONEY CAN LEGALLY BE SPLIT BETWEEN THE VICTIM AND THE OTHER PERSON(S). WHEN THE VICTIM OBTAINS OR GETS THEIR OWN FUNDS FOR THE DEPOSIT (CASH), THE SUSPECTS LEAVE WITH THE VICTIM'S CASH AND THE BAG OF MONEY TO BE SPLIT IS LEFT WITH THE VICTIM. WHEN THE BAG IS OPENED THE BAG CONTAINS ONLY PAPER AND POSSIBLY SOME MONEY COVERING THE PAPER. THE ACTORS OF THIS TYPE OF CRIME ARE USUALLY VERY MOBILE AND DO NOT STAY IN ONE LOCATION VERY LONG.

WHILE I WAS ENROUTE TO THE SCENE, OFFICER KEITH JOBE EXPLAINED ON THE POLICE RADIO THAT HE WAS FOLLOWING A WHITE VAN LEAVING THE WAL-MART PARKING LOT, WITH THREE OCCUPANTS. AT LEAST ONE OF THE PERSONS FIT THE DESCRIPTION OF ONE ACTOR IN THE ATTEMPTED THEFT. OFFICER JOBE WAS ADVISED TO STOP THE VEHICLE AND IT WAS STOPPED IN FRONT OF THE HOLIDAY INN (LOOP 289 AND INDIANA).

DETECTIVE MCNEILL ARRIVED FIRST ON THE SCENE AND ADVISED RADIO DISPATCH TO CALL THE VICTIM (ELENITA HESTER) AND ASK HER TO COME TO THE SCENE FOR A FIELD IDENTIFICATION. I WAS THEN ADVISED THAT THE VICTIM DECLINED TO COME TO THE SCENE AND I HEARD OFFICER HOUSER ANNOUNCE ON THE POLICE RADIO (TALK #1) THAT THE SUSPECTS WERE REQUESTING AN ATTORNEY. [THIS WOULD ELIMINATE READING THE

MIRANDA RIGHTS OR ASKING THE PERSONS QUESTIONS FOR CONSENT TO SEARCH.] IT WAS DECIDED TO VISIT THE VICTIM AT HER HOME AND EXPLAIN TO HER WHAT WAS INVOLVED IN A FIELD IDENTIFICATION. RANDY HESTER (VICTIM'S HUSBAND) ANSWERED THE DOOR. THE VICTIM ADVISED THAT SHE WAS AFRAID TO CONFRONT ANY SUSPECTS AND DID NOT WANT THEM TO SEE HER BECAUSE THAT MUCH MONEY BEING INVOLVED MAY HAVE DRUG WORLD CONNECTIONS. V-1 WAS ASSURED THAT IF SHE ACCOMPANIED THIS INVESTIGATOR TO THE SCENE SHE WOULD NOT HAVE TO CONFRONT THE SUSPECTS AND WOULD BE ABLE TO VIEW THEM WITHOUT THEIR KNOWLEDGE FROM THE INVESTIGATOR'S VEHICLE. V-1 AGREED TO THE FIELD IDENTIFICATION AND HER HUSBAND AND SON CAME WITH US. ON THE DRIVE TO THE SCENE V-1 ASKED, "WHAT IF THE PEOPLE STOPPED ARE THE WRONG PEOPLE?" I TOLD V-1 THEY MAY BE THE WRONG PEOPLE AND THAT IS WHY WE NEED HER TO TELL US IF WE HAVE STOPPED THE RIGHT PEOPLE . V-1 WAS ALSO INFORMED THAT THE OFFICER SHE HAD TALKED TO AT HER HOME (KEITH JOBE) HAD DRIVEN TO WAL-MART AFTER LEAVING HER HOME AND FOUND A WHITE VAN LEAVING THE WAL-MART WITH AT LEAST ONE PERSON FITTING THE CLOTHING DESCRIPTION. WE DISCUSSED THE POSSIBILITY THAT OTHER PERSONS MAY HAVE BEEN APPROACHED ABOUT THE SAME KIND OF CRIME OR SCAM AND WE DO NOT KNOW IF OTHER CITIZENS OF LUBBOCK WERE VICTIMIZED TODAY. I

ALSO TOLD THE VICTIM THAT THIS SORT OF CRIME HAPPENS IN LUBBOCK FROM TIME TO TIME.

I ARRIVED AT THE SCENE (INDIANA & LOOP 289) WITH V-1 AROUND 1720 HOURS. IT WAS A CLEAR AND BRIGHT DAY AND VISIBILITY WAS EXCELLENT. I PARKED MY UN-MARKED POLICE CAR IN A PARKING SPACE AT THE HOLIDAY INN HOTEL, ABOUT 15 CAR LENGTHS WEST OF THE WHITE VAN AND THE POLICE CARS. THIS WAS DONE TO NOT DRAW THE ATTENTION OF THE SUSPECTS BECAUSE THE VICTIM DID NOT WANT TO BE SEEN BY THE SUSPECTS. V-1 WAS IN THE FRONT RIGHT PASSENGER SEAT OF THE DETECTIVE'S CAR AND V-1'S HUSBAND (RANDY) WAS IN THE BACK RIGHT SEAT AND THE VICTIM'S SON WAS IN THE BACK LEFT SEAT. OFFICERS MCNEILL AND JOBE REMOVED THE SUSPECTS FROM VEHICLES AS I DROVE SLOWLY EAST WITH THE VICTIM FOR IDENTIFICATION PURPOSES. AS WE DROVE PAST, THE VICTIM WAS ASKED IF THIS WAS CLOSE ENOUGH AND WE STOPPED ABOUT 3 CAR LENGTHS FROM THE SUSPECTS. V-1 SAID "THAT IS ONE OF THEM". CONFIRMING A-1 (VANETTA ROBINSON KELSO, DRESSED IN BROWN) WAS ONE OF THE TWO ACTORS OF THIS ATTEMPTED THEFT. V-1 ALSO ADVISED THAT THE TALLER LADY (PATRICIA BIBBS) WAS "POSSIBLY" THE OTHER PERSON BUT STATED "IF IT WAS HER SHE MUST HAVE CHANGED CLOTHING." V-1 ADVISED THE SECOND ACTOR HAD ON GREEN OR TEAL BLUE HOSPITAL SCRUBS. I USED THE POLICE RADIO (TALK #1 CHANNEL) AND INFORMED DETECTIVE MCNEILL THE FEMALE DRESSED IN THE BROWN SUIT COAT AND BROWN

SLACKS HAS BEEN IDENTIFIED AS ONE OF THE ACTORS AND THE TALLER LADY DRESSED IN THE JOGGING SUIT WAS POSSIBLY THE OTHER ACTOR BUT SHE MAY HAVE CHANGED CLOTHING. THIS COMMUNICATION WAS DONE INSIDE MY UNMARKED POLICE VEHICLE WITH THE VICTIM AND HER FAMILY LISTENING. THE HESTER FAMILY WAS THEN DRIVEN BACK HOME.

UPON RETURNING TO THE SCENE, I OBSERVED AN AMBULANCE LEAVING THE AREA. I SAW THE RENTED VAN CONTAINED SEVERAL BAGS, PURSES, AND PLASTIC BAGS CONTAINING FOOD ITEMS AND POSSIBLE EVIDENCE OF THE CRIME. I DID NOT ASK THE SUSPECTS ANY QUESTIONS, BECAUSE THEY HAD ALREADY ASKED FOR AN ATTORNEY. THIS ALSO ELIMINATED PLANS OF ASKING THEM FOR A CONSENT TO SEARCH. DUE TO THE ACTIONS OF THE SUSPECTS, THE OUT OF STATE DRIVER'S LICENSE, THE RENTED VEHICLE, THE POSITIVE IDENTIFICATION BY THE VICTIM OF AT LEAST ONE ACTOR AND THE POSSIBLE IDENTIFICATION OF THE SECOND SUSPECT, ALL THREE SUSPECTS WERE ARRESTED. THE ITEMS IN THE RENTED VAN WERE PLACED IN THE TRUNK OF MY CAR AND TAKEN TO THE POLICE DEPARTMENT AS EVIDENCE. PLANS WERE BEING MADE TO OBTAIN A SEARCH WARRANT TO LOOK THROUGH THE BAGS FOR EVIDENCE OF THIS CRIME.

I ARRIVED AT THE POLICE DEPARTMENT ABOUT THE SAME TIME AS OFFICER HOUSER, WHO HAD TRANSPORTED PATRICIA AND EZIL BIBBS. I FOLLOWED THEM INTO THE BOOKING AREA AND WAS

QUICKLY ADVISED THE MAYOR OF LUBBOCK (WINDY SITTON) WAS IN THE MAIN LOBBY WANTING TO KNOW WHAT WAS HAPPENING. THIS IS WHEN I LEARNED THAT THE PERSONS WERE COACHES FROM HAMPTON UNIVERSITY IN VIRGINIA. I WENT TO THE MAIN LOBBY AND TALKED TO THE MAYOR. DETECTIVE CAPTAIN WARD HAD ARRIVED AND BEGAN ASSISTING WITH THE INVESTIGATION. ASSISTANT DISTRICT ATTORNEY TREY HILL ALSO ARRIVED AT THE POLICE DEPARTMENT TO ASSIST WITH THE LEGAL ISSUES IN THE CASE. I LATER WENT TO THE DETENTION FACILITY, WHERE PATRICIA BIBBS AND EZIL BIBBS WHERE ALREADY BOOKED AND PLACED IN HOLDING CELLS. I THEN CONTACTED MR. BIBBS AT OUR DETENTION FACILITY. I TOLD HIM WHO I WAS AND EXPLAINED WHY THEY HAD BEEN ARRESTED AND WHAT THE CHARGES WHERE. MR. BIBBS TOLD ME THAT A MISTAKE HAS BEEN MADE. I TOLD HIM IF A MISTAKE HAS BEEN MADE WE WOULD ATTEMPT TO CLEAR UP THE SITUATION BUT WITHOUT ANY COOPERATION FROM HIM AND THE OTHER PERSONS IN THE VAN, WE HAD NO CHOICE BUT TO ARREST OR DETAIN THEM FOR FURTHER INVESTIGATION. I THEN WENT TO PATRICIA BIBBS AND ADVISED HER WHO I WAS AND I EXPLAINED THAT THE ASSISTANT COACH (VANETTA KELSO) WAS IDENTIFIED AS THE ACTOR OF THIS ATTEMPTED FELONY THEFT AND THIS HAD IMPLICATED HER AS ALSO BEING INVOLVED. I ALSO EXPLAINED WHAT THE CHARGES WHERE. PATRICIA BIBBS MADE THE SAME COMMENT ABOUT A MISTAKE HAS BEEN MADE. I

ADVISED HER THAT IF A MISTAKE HAS BEEN MADE WE WOULD ATTEMPT TO CLEAR UP THE SITUATION, HOWEVER IT WOULD HELP IF SHE WOULD COOPERATE WITH US IN SOME WAY. CAPTAIN WARD WAS ALSO IN THE AREA OF PATRICIA BIBBS CELL WHEN I TALKED TO HER BUT I DO NOT BELIEVE PATRICIA BIBBS SAW CAPTAIN WARD. I ALSO TOLD MRS. BIBBS THAT THE MAYOR OF THE CITY OF LUBBOCK WAS IN THE POLICE LOBBY AND VERY CONCERNED ABOUT WHAT WAS TAKING PLACE. I TOLD HER WHAT THE CHANCELLOR OF TEXAS TECH UNIVERSITY WAS MAKING INQUIRIES ABOUT THE SITUATION, AS WELL AS THE LUBBOCK POLICE CHIEF. I NEVER SAW VANETTA, KELSO, WHO WAS BEING TREATED AT A LOCAL HOSPITAL.

THE VICTIM WAS CONTACTED AND AGREED TO COME TO THE DETECTIVE DIVISION TO GIVE A DETAILED STATEMENT ABOUT THE EVENTS. WHEN CALLED AT HOME, RANDY HESTER ADVISED THEY DID NOT WANT TO GET ANYMORE INVOLVED THAN THEY ALREADY WERE AND SINCE THEY WERE NOT OUT ANY MONEY, THEY DID NOT WANT TO FILE ANY CHARGES. I ADVISED RANDY THAT WE NEEDED A STATEMENT FROM ELENITA HESTER AND WE WOULD NEED THAT INFORMATION ABOUT NOT WANTING TO FILE CHARGES INCLUDED IN THE STATEMENT. V-1 AND HER HUSBAND DROVE TO THE POLICE DEPARTMENT AND ATTACHED STATEMENT WAS GIVEN. AFTER GIVING THE STATEMENT I WALKED WITH THEM TO THEIR CAR. RANDY HESTER ASKED ME IF HIS WIFE WOULD EVER HAVE TO FACE THE ARRESTED PERSONS. I TOLD RANDY AND

V-1 THAT IF WE GOT TO A COURT TRIAL IT WOULD BE NECESSARY TO BRING THE WITNESS IN FRONT OF THE ACCUSED. I ALSO INFORMED THE HESTER'S THAT THE PERSONS ARRESTED WERE APPARENTLY BASKETBALL COACHES FROM VIRGINIA.

A SEARCH WARRANT WAS BEING PREPARED WHEN LOCAL ATTORNEY BILL WISCHKAEMPER ARRIVED REPRESENTING THE THREE ARRESTED PERSONS. UPON DISCUSSION WITH THE ATTORNEY ABOUT THE EVENTS, A CONSENT TO SEARCH WAS GIVEN (SEE ATTACHMENT). MR. WISCHKAEMPER REQUESTED TO BE PRESENT DURING THE SEARCH OF THE BAGS AND COMMENTED THAT WE SHOULD BE AWARE THAT THESE BASKETBALL TEAMS MAY CARRY AS MUCH AS $10,000 IN CASH BECAUSE THEY DEAL ONLY IN CASH FOR HOTELS AND OTHER TRAVEL EXPENSES. THE PROPERTY WAS TAKEN TO THE PATROL OFFICE AND A SEARCH BEGAN FOR ANY HOSPITAL SCRUBS UNIFORM, A BLACK OVER-SIZED EYEGLASS CASE WITH A SNAP AND A 3" X 5" CARD SAYING, "DEAR JOSE, WE DID IT AGAIN, HERE IS $150,000 DOLLARS, BUT BE CAREFUL BECAUSE THE I.R.S. IS ON TO US." THREE BAGS WERE SEARCHED ALONG WITH THE PLASTIC SACKS CONTAINING FOOD. NO EVIDENCE OF THE CRIME WAS FOUND.

THE SUSPECTS WERE BOOKED AND RELEASED FROM THE CITY HOLDING FACILITY AND THE PROPERTY WAS RETURNED TO THEM.

LT. SLACK LATER CALLED ME AT HOME AND ADVISED THAT THE COACHES AND THEIR ATTORNEY HAD LEFT BEHIND A TRIPOD AND IT WOULD BE IN THE DESK SERGEANT'S OFFICE. I CALLED THE ATTORNEY AND LEFT A MESSAGE ON HIS OFFICE RECORDER. I WAS CALLED THE NEXT DAY AND TALKED WITH MR. WISCHKAEMPER. HE SAID HE WOULD PICK UP THE TRIPOD AND RETURN IT TO THE COACHES.

THE NEXT DAY (11-17-98) I CALLED THE VICTIM WITH ADDITIONAL QUESTIONS ABOUT WHICH EXIT OR ENTRANCE DOORS WERE USED. WE NOW HAD VIDEO TAPES FROM WAL-MART AND NEEDED THIS INFORMATION. V-1 OFFERED TO COME LOOK CLOSELY AT THE POLICE PHOTO'S IF SHE WAS NEEDED. ON THE MORNING OF 11-18-98 THE VICTIM LEFT A MESSAGE FOR ME TO CALL HER. I CALLED AND V-1 STATED THAT SHE HAD RECEIVED THREE CALLS FROM NEWS CHANNEL 11 WANTING AN INTERVIEW WITH THEM. V-1 SAID SHE HAD TOLD THEM SHE HAD NOTHING TO SAY. I SUGGESTED THAT THIS MIGHT BE THE BEST RESPONSE TO ANY QUESTIONS FROM THE MEDIA. V-1 TOLD ME SHE WAS CONCERNED THAT SHE MAY HAVE MADE A MISTAKE IN HER IDENTIFICATION AND IF SHE DID, IT WAS MAKING HER FEEL VERY BAD. I TOLD V-1 SHE WAS SINCERE IN HER IDENTIFICATION AND IF THE PERSONS ARRESTED WHERE [sic] NOT THE RIGHT PEOPLE WE WERE WORKING VERY HARD TRYING TO CLEAR THEM OF THIS CRIME AND TO FIND THE RIGHT PEOPLE.

Report Control Information

Reporting Officer:
OVERLAND M
Date: 11/17/98
Number: P00350
Time: 08:45

Typed by: OVERLAND
Number: P350
Date:11/17/98
Time: 08:47

Approving Officer:
WARD R
Date: 11/23/98
Number: P00990
Time: 14:33

LUBBOCK - POLICE - DEPARTMENT

-Case Supplement Report-

Reported Date: 11/16/98	Time: 16:18	Case: 98-046570 (006) Page 1
Code: 31.03 PC	Crime: ATT. THEFT	Class:
Occurrence Date: 11/16/98	Day: MONDAY	Time: 15:15
Status: AS ASSIGNED	Closing Officer:	P00176 JOBE KEITH

Location: 4215 S. LOOP 289, LU
WAL MART SUPER
CENTER

RD: 62

INVOLVED PERSONS

INV. PARTY-1:
MCNABB DARYL WAYNE
6201 7TH ST., LU

DOB: 12/29/70
Race: W
Sex: M

Apt: State: TX Zip: 79416
Phone: 806
793-8167 Adu/Juv: A

POB: Hair: Eye: Hgt: Wgt: Bld:
Business Name:
WALMART
4215 S. LOOP 289
LUBBOCK, TX 79423

Phone: 806-793-2091

INV. PARTY-2:
HEDRICK DETECTIVE
SCOTT

DOB:
Race: W
Sex: M

Apt: State: Zip: Phone: Adu/Juv: A
Business name:
HAMPTON POLICE DEPT
HAMPTON, VA

Phone: 757 727-6636

INV. PARTY-4:
MEBANE WALTER

DOB:
Race: B
Sex: M

Apt: State: Zip: Phone: Adu/Juv: A
POB: Hair: Eye: Hgt: Wgt: Bld.:

Business Name:
HAMPTON UNIVERSITY
ASST. BASKETBALL
COACH
HAMPTON, VA

Phone:

NARRATIVE

ON 11-16-98 I WAS ASKED TO ASSIST DETECTIVE OVERLAND WITH THIS CASE. I WAS INFORMED THAT OFFICER K. JOBE HAD POSSIBLE SUSPECTS LOCATED AND WAS WATCHING THEM. I WAS ASKED TO ASSIST DETECTIVE OVERLAND WITH THE SURVEILLANCE OF THE SUSPECTS.

WHILE ENROUTE TO OFFICER JOBE'S LOCATION, WALMART, 4215 SOUTH LOOP 289, OFFICER JOBE INFORMED US THAT THE SUSPECTS WERE DRIVING OUT OF THE PARKING LOT. OFFICER JOBE SAID THAT THEY WERE DRIVING EASTBOUND ON THE SOUTH LOOP 289 ACCESS ROAD IN A WHITE VAN. OFFICER HOUSER WAS NOW WITH OFFICER JOBE. DETECTIVE OVERLAND ASKED THAT A TRAFFIC STOP BE INITIATED. THIS WAS DONE SO THE PEOPLE IN THE VEHICLE COULD BE IDENTIFIED. A SHORT TIME LATER (FIVE OR TEN SECONDS), I ASKED OFFICER JOBE, VIA POLICE RADIO, WHERE THEY WERE STOPPED. HE TOLD ME THAT ALTHOUGH THEY HAD THEIR RED AND BLUE EMERGENCY LIGHTS ON, THE VEHICLE WAS NOT STOPPING. HE THEN INFORMED ME THAT THEY WERE DRIVING THROUGH THE TRAFFIC LIGHT AT SOUTH LOOP 289 AND INDIANA AVENUE. HE LATER INFORMED US THAT HE HAD THE VEHICLE STOPPED IN THE HOLIDAY INN PARKING LOT.

I ARRIVED AT THE HOLIDAY INN PARKING LOT AROUND 1705 HOURS AND MADE CONTACT WITH OFFICERS JOBE AND HOUSER. OFFICER HOUSER MADE A COMMENT TO ME THAT THE OCCUPANTS

OF THE VAN WERE BEING VERY UNCOOPERATIVE. HE SHOWED ME THE THREE PIECES OF IDENTIFICATION HE HAD OBTAINED FROM THE VAN OCCUPANTS. UPON OUR INITIAL LOOK AT THE DRIVER'S LICENSE'S IT APPEARED THAT THE LOUISIANA DRIVER'S LICENSES HAD BEEN MIS-CUT AND WERE OFF CENTER. THESE TWO LICENSES BELONGED TO (A-2) PATRICIA BIBBS AND (A-3) EZIL BIBBS. OFFICER JOBE CHECKED THE VALIDITY OF THE LICENSES USING A STATE IDENTIFICATION AND DRIVER'S LICENSE BOOKLET. THE LICENSES APPEARED TO HAVE ALL THE QUALITIES OF VALID LICENSES ACCORDING TO THE BOOKLET. (A-1) VANETTA KELSO'S TENNESSEE DRIVER'S LICENSE WAS ALSO CHECKED USING THE BOOKLET.

WHEN DETECTIVE OVERLAND ARRIVED I ASKED HIM IF HE COULD TRANSPORT THE VICTIM, ELENITA HESTER, FROM HER RESIDENCE TO OUR LOCATION SO A FIELD IDENTIFICATION COULD BE CONDUCTED. DETECTIVE OVERLAND DID TRANSPORT MS. HESTER TO OUR LOCATION. ONCE HE ARRIVED, OFFICER'S JOBE AND HOUSER ASKED MS. KELSO AND MS. BIBBS TO EXIT THEIR VEHICLE AND WALK BACK TO WHERE THE PATROL CARS WERE PARKED. THIS IS THE FIRST TIME I SAW EITHER OF THE SUSPECTS. MS. BIBBS APPEARED TO BE SUBDUED. MS. KELSO WAS AGITATED AND VERY AGGRESSIVE IN HER MANNERISMS. AS SHE WAS TALKING TO EITHER OFFICER HOUSER OR JOBE, I COULD HEAR THE OFFICER TELL HER MY NAME. I STEPPED OVER TO WHERE SHE WAS AND SHE WAS WRITING MY NAME ON A PIECE OF BROWN PAPER. I

OFFERED TO SPELL MY LAST NAME CORRECTLY AND MS. KELSO YELLED AT ME THAT SHE COULD SPELL AND ABRUPTLY TURNED AWAY. DETECTIVE OVERLAND THEN DROVE MS. HESTER TO WITHIN THIRTY FEET OF WHERE WE HAD MS. KELSO AND MS. BIBBS STANDING. HE THEN INFORMED US, VIA POLICE RADIO, THAT THE VICTIM HAD POSITIVELY IDENTIFIED THE HEAVY SET FEMALE (KELSO). I ASKED IF HE MEANT THE FEMALE IN THE BROWN SUIT AND HE TOLD ME THAT WAS CORRECT. HE LATER TOLD ME THAT MS. BIBBS WAS POSSIBLY THE SECOND FEMALE INVOLVED BUT HER CLOTHING HAD BEEN CHANGED IF SHE WERE INVOLVED. MS. HESTER WAS TRANSPORTED BACK TO HER RESIDENCE BY DETECTIVE OVERLAND.

THE DECISION WAS MADE TO ARREST THE THREE SUBJECTS. THIS DECISION WAS MADE BECAUSE:

A) THE DRIVER OF THE VAN, MS. KELSO, HAD ACTED SUSPICIOUSLY BY NOT IMMEDIATELY PULLING OVER WHEN THE TRAFFIC STOP WAS INITIATED,

B) THEY WERE IN A RENTED VEHICLE,

C) THEY HAD OUT OF STATE IDENTIFICATION, FROM TWO DIFFERENT STATES,

D) MS. KELSO HAD BEEN IDENTIFIED BY THE VICTIM AS BEING INVOLVED IN THIS CRIME, AND

E) MS. BIBBS WAS IDENTIFIED AS POSSIBLY BEING INVOLVED IN THIS CRIME. OFFICER'S HOUSER AND JOBE HANDCUFFED MS. KELSO AND MS. BIBBS. I WALKED TO THE VAN AND ASKED MR. BIBBS TO

WALK WITH ME TO WHERE THE POLICE CARS WERE PARKED. I EXPLAINED TO HIM THAT ALL THREE WERE BEING ARRESTED FOR A THEFT THAT OCCURRED IN THE WALMART PARKING LOT. MR. BIBBS WAS VERY COOPERATIVE AT THIS TIME. HE WAS HANDCUFFED BY SGT. HEARRON AND PLACED IN THE BACK SEAT OF SGT. HEARRON'S CAR.

AT ONE POINT AFTER THE ARRESTS WERE MADE I WAS TOLD BY OFFICER HOUSER THAT MS. KELSO HAD GOTTEN SICK IN OFFICER JOBE'S CAR. POLICE DISPATCH WAS CONTACTED TO HAVE EMS DISPATCHED TO OUR LOCATION. MS. KELSO WAS TAKEN OUT OF THE BACK SEAT OF OFFICER JOBE'S CAR BY SGT. HEARRON AND OFFICER HOUSER. I WAS ABOUT TEN FEET AWAY AND I OBSERVED MS. KELSO WALKING TOWARDS OFFICER HOUSER WITH HER HEAD BENT TOWARD HIM. IT APPEARED TO ME AS IF SHE WERE TRYING TO VOMIT ON OFFICER HOUSER. EMS ARRIVED AND SAW TO THE TREATMENT OF MS. KELSO. SHE WAS SUBSEQUENTLY TRANSPORTED TO UNIVERSITY MEDICAL CENTER.

A SHORT TIME LATER MS. B BS ASKED IF SHE COULD BE LET OUT OF OFFICER HOUSER'S VEHICLE BECAUSE SHE WAS VERY CRAMPED. I ALLOWED HER TO EXIT THE VEHICLE. AT THIS TIME I ASKED HER CASUALLY WHAT HER BUSINESS WAS IN LUBBOCK. SHE TOLD ME THAT SHE WAS A PERSONAL FRIEND OF MARSHA SHARP (TEXAS TECH WOMAN'S BASKETBALL COACH) AND THAT SHE HAD BROUGHT HER BASKETBALL TEAM TO LUBBOCK TO PLAY A GAME AGAINST THE TEXAS TECH

TEAM. AT ABOUT THIS TIME AN INDIVIDUAL WEARING SIMILAR CLOTHING (BLUE AND WHITE WARMUP SUIT) TO MR. AND MS. BIBBS WALKED UP TO ME. HE WAS LATER IDENTIFIED AS (IP-4) WALTER MEBANE. HE ASKED IF HE COULD SPEAK TO MS. BIBBS. I ALLOWED HIM TO SPEAK TO HER WHILE I STOOD NEARBY. HE ASKED HER ABOUT CONTACTING SOMEONE FROM THE "UNIVERSITY." SHE SAID THAT ALL HER NUMBERS WERE INSIDE HER PURSE OR WALLET IN THE VAN. I ASKED HER WHERE I COULD FIND THE PURSE OR WALLET AND SHE SAID THAT IT SHOULD BE INSIDE A BLACK BAG WITH "MEAC" WRITTEN ON IT. I WENT TO THE VAN AND FOUND THE BLACK BAG AND WALLET. I WALKED TO MR. MEBANE AND HELD THE WALLET OUT TO HIM. WITH ME STILL HOLDING THE WALLET HE SEARCHED FOR A BUSINESS CARD OR PIECE OF PAPER THAT HAD THE DESIRED TELEPHONE NUMBER. ONCE HE HAD THIS I TOOK THE WALLET BACK TO THE VAN. MR. MEBANE ASKED ME WHAT WAS GOING TO HAPPEN TO "COACH BIBBS."I EXPLAINED THAT THEY WOULD BE BOOKED INTO THE CITY OF LUBBOCK HOLDING FACILITY, ARRAIGNED, THEN TRANSPORTED TO THE COUNTY JAIL. HE ASKED FOR A CONTACT NUMBER AT THE POLICE DEPARTMENT. I GAVE HIM 775-2817, THE DESK SERGEANT'S TELEPHONE NUMBER.

A SHORT TIME LATER I HEARD WHAT SOUNDED LIKE A GUNSHOT. IN LOOKING FOR WHERE THIS SOUND HAD COME FROM I LOOKED IN THE DIRECTION OF MY UNMARKED POLICE UNIT. MR. MEBANE WAS STANDING BEHIND MY CAR AND TOLD ME

THAT MY TIRE HAD BLOWN OUT. THE SIDEWALL OF MY REAR PASSENGER TIRE HAD BLOWN OUT. THIS WAS APPROXIMATELY 1750 HOURS AS I CONTACTED POLICE DISPATCH TO HAVE SOMEONE COME REPLACE MY TIRE. AT ABOUT 1820 HOURS MR. AND MS. BIBBS WERE TRANSPORTED TO THE POLICE DEPARTMENT BY OFFICER HOUSER. I WAITED FOR A REPLACEMENT TIRE, THEN WENT OUT OF SERVICE.

ON 11-17-98 AT APPROXIMATELY 1400 HOURS, I VIEWED THE VIDEOTAPES RECEIVED FROM WAL-MART SUPERCENTER, SOUTH LOOP 289 AND QUAKER AVENUE. I WAS ABLE TO IDENTIFY (A-1) VANETTA KELSO, (A-2) PATRICIA BIBBS AND (A-3) EZIL BIBBS COMING INTO THE WALMART STORE AT 16:15:08 HOURS ON 11-16-98. (THIS TIME IS REPORTED BY (IP-1) DARYL MCNABB TO BE ONE HOUR AHEAD OF THE ACTUAL TIME. DARYL MCNABB IS STORE SECURITY FOR WALMART.) MS. KELSO AND MR. AND MS. BIBBS ARE WEARING THE SAME CLOTHING THEY WERE WEARING WHEN I FIRST SAW THEM AT ABOUT 1700 HOURS ON 11-16-98.

(NOTE: AFTER REVIEWING ALL TAPES FROM WAL-MART, IT APPEARS THAT THE ABOVE TAPE DOES HAVE THE CORRECT TIME. BASED ON INFORMATION THAT THE TIME APPEARING ON THE TAPE WAS ONE HOUR OFF, IT WAS ORIGINALLY THOUGHT THAT MS. KELSO AND THE BIBBS WERE IN WAL-MART AROUND THE SAME TIME AS THE INCIDENT IN THE PARKING LOT, ABOUT 3:15PM. SINCE THE TIMES ON THE TAPE ARE NOW CONSIDERED COR-RECT, MS. KELSO AND THE BIBBS WERE ACTUALLY

IN THE STORE ABOUT AN HOUR AFTER THE INCIDENT OCCURRED.)

I WAS GIVEN A HAMPTON WOMAN'S BASKETBALL SCHEDULE FROM LAST YEAR AND THIS YEAR THAT WAS OBTAINED FROM THE INTERNET. I FOUND THAT HAMPTON PLAYED IN DOVER, DELAWARE ON 02-23-98 (DELAWARE STATE UNIVERSITY). I CONTACTED THE DOVER, DELAWARE POLICE DEPARTMENT AND INQUIRED IF THEY HAD EXPERIENCED ANY CRIMES SIMILAR TO THIS ONE DURING THE WEEK OF 02-23-98. DETECTIVE BELEVEZ OF THE DOVER POLICE DEPARTMENT SAID THAT HE WAS UNABLE TO FIND ANY SIMILAR CRIMES DURING THE WEEK OF 02-23-98.

I DID SPEAK WITH (IP-2) DETECTIVE SCOTT HEDRICK OF THE HAMPTON, VIRGINIA POLICE DEPARTMENT. HE SAID THAT AT THIS TIME HE DOES NOT REMEMBER A CRIME SIMILAR TO THIS ONE OCCURRING IN THE LAST YEAR IN HAMPTON, VIRGINIA. HE SAID THAT HE WOULD REVIEW CASE REPORTS AND CONTACT ME AT A LATER DATE.

Report Control Information

Reporting Officer:
MCNEILL BRIAN
Date: 11/17/98
Typed by: MCNEILL
Number: P165
Date:11/17/98

Number: P00165
Time: 14:45

Time: 14:46

Approving Officer:
WARD R
Date: 11/23/98

Number: P00990
Time: 14:33

LUBBOCK - POLICE - DEPARTMENT

-Case Supplement Report-

Reported Date: 11/16/98	Time: 16:18	Case: 98-046570 (007) Page 1
Code: 31.03 PC	Crime: ATT. THEFT	Class:
Occurrence Date: 11/16/98	Day: MONDAY	Time: 15:15
Status: AS ASSIGNED	Closing Officer:	P00176 JOBE KEITH
Location:	4215 S. LOOP 289, LU WAL MART SUPER CENTER	RD: 62

NARRATIVE

ON 11-17-98, AT THE DIRECTION SGT. M. MCGUIRE, THE BELOW LISTED SURVEILLANCE VIDEO TAPES WERE PICKED UP AS EVIDENCE FROM WALMART'S LOSS PREVENTION OFFICERS DARYL MCNABB AND TOM CARROL.

1) TAPE NUMBER 8 / WEST PARKING LOT

2) TAPE NUMBER 9 / EAST PARKING LOT

3) TAPE NUMBER 10 / INSIDE VIEW OF FRONT EAST AND WEST DOORS.

4) TAPE NUMBER 24 / EAST SIDE EXPRESS LANE, REGISTER NUMBER ONE.

5) TAPE NUMBER 39 / OVERVIEW OF ELECTRONICS DEPARTMENT.

INVESTIGATIVE NOTE:

ACCORDING TO MR. MCNABB, THE VCR CLOCK, WHICH TAPE NUMBER 8 WAS RECORDED ON, IS ONE HOUR AHEAD OF THE TIME SHOWN ON THE TAPE. MR. MCNABB EXPLAINED THAT THE TIME SETTING FOR THIS VCR DOES NOT AUTOMATICALLY CHANGE, LIKE THE OTHER VCR'S DO WHEN DAY-LIGHT SAVINGS TIME OCCURRED.

THE FIVE VCR TAPES ARE IN THE POSSESSION OF DETECTIVE BRAIN [sic] MCNEILL FOR REVIEW AND EVALUATION.

Report Control Information -Page 1-

Reporting Officer:
BECKHAM D
Date: 11/17/98
Typed by: BECKHAM
Number: P026
Date:11/17/98

Number: P00026
Time: 14:45

Time: 14:52

Approving Officer:
MCQUIRE M K
Date: 11/19/98

Number: P00538
Time: 09:47

NES}LUBBOCK ~ POLICE ~ DEPARTMENT

-Case Supplement Report-

Reported Date: 11/16/98	Time: 16:18	Case: 98-046570 (008) Page 1
Code: 31.03 PC	Crime: ATT. THEFT	Class:
Occurrence Date: 11/16/98	Day: MONDAY	Time: 15:15
Status: AS ASSIGNED	Closing Officer:	P00176 JOBE KEITH

Location: 4215 S. LOOP 289, LU WAL MART SUPER CENTER

RD: 62

NARRATIVE

On 11/16/98, at about 14:10 hours, I received a telephone call from a man who identified himself as Randy Hester. Mr Hester said his wife had just been involved in a strange situation at the Walmart Store at south Loop 289

and Quaker and was curious if someone had just tried to commit a crime against his wife.

Mr Hester the related the following account:

Ms Hester had exited the Walmart Store and was preparing to enter her vehicle when she was approached by a black female. The woman picked up something from beside or underneath Ms Hester's vehicle and asked if it belonged to Ms Hester. The woman showed Ms Hester a small black case. Ms Hester said the woman suggested that Ms Hester look inside the case for identification. Ms Hester did look and observed a 3 X 5 card which had writing on it. The card said something to the effect of "Jose; here's your $150,000.00, but be careful-the IRS is on to us" Ms Hester was then prompted to look in the other side of the case and observed what appeared to be a large bundle of U.S. currency. At that time another black female walked by and was summoned over by the first black female. The second black female was appraised of the situation and she indicated that she knew of a way that the three women could split the money. Ms Hester was afraid to get involved and she drove off. Mr Hester then asked if this situation had anything to do with his wife being of oriental descent.

I explained to Mr Hester that his wife was an intended victim of a theft operation known as a "Pigeon Drop". In this scam, an individual approaches the intended victim and appears to find a sack or bag. The victim is asked if the bag belongs to the victim. When the victim indicates that the bag doesn't belong to them, the suspect prompts the victim to open the bag and check for identification. No identification is found, but now the intended victim is

actively involved in "finding" the property and this lowers suspicion. What appears to be a large amount of cash is found in the bag. The victim now believes that she and the other suspect has found a large amount of unreturnable cash. Generally, a second suspect now joins the scam. The addition of what appears to be an uninvolved third party, further averts suspicion and places the victim at ease. The second suspect is made aware of the situation and appears to have a logical solution of how the three individuals can legally divide the cash. While there are numerous variations of this "solution", all involve the three persons contributing an equal amount of "good faith" money in order to cover the expenses of claiming the found cash. The supposed cost may be payable to a lawyer, CPA or to a bank for establishing a trust fund. Once the decision is made to claim the money, the two suspects produce their required amounts; which is hundreds or thousands of dollars. The victim is asked to produce their money and the two suspects will generally accompany the victim to their home or bank to obtain the money. The three equal shares of "good faith" money will all be placed in one bag or sack and the victim will be directed to a commercial office or bank. The two suspects then tell the victim that one of them will take the "good faith" money into the bank or law office, but that they trust the victim to hold the far larger amount of found cash. When the first suspect does not return, the second suspects enters the building to find the first suspect and still leaves the "found cash" with the victim. After awhile, when neither suspect returns the victim will look into the bag or sack and find a stack or bundle of newspaper or other paper cut to the dimensions of currency.

This ploy is often used against persons of other nationalities because they are often reluctant to contact the authorities, or against the elderly as they are often more trusting of strangers.

I told Mr Hester that we did need to make a police report as the suspects would probably attempt to take advantage of other victims in the city.

I then contacted the communication center and had a unit dispatched to their residence to take a crime report. I then contacted Detective Overland as he is responsible for criminal investigations in the portion of the city. I told him of the attempted – "Pigeon Drop" that had just occurred and suggested that he contact the patrol officer taking that report so we could distribute the suspect information as soon as possible. Detective Overland contacted Officer Jobe by telephone and they exchanged information. A short time later, I was notified that Officer Jobe had located two possible suspects in the Walmart parking lot and was watching them. I instructed Detectives Overland and McNeill go to the business and begin surveillance.

While enroute to my residence, I monitored radio traffic and learned that a white van with the two suspects and another black male had driven off the lot prior to detective's arrival. Patrol officers were directed to stop the vehicle and they did. I then heard that Detectives Overland and McNeill were on the scene. I heard that the detained subjects all had out of state identification and were in a rental vehicle. I then suggested that a CSO be summoned to the scene to photograph and fingerprint

the three subjects if they were going to be released. At this point I exited my vehicle.

At about 19:00 hours, I received a telephone call from Colonel Jones and he advised me that several members of the Hampton, Virginia basketball coaching staff had been arrested by our department and I went to the police Department. When I arrived at the PD, I found that Patricia Bibbs and Ezel [sic] Bibbs were in custody at the detention facility, but had refused to discuss this incident and had requested a lawyer. I was told that Vanetta Kelso had been transported to UMC for possible medical treatment. Attorney Bill Wischkaemper arrived and said that he had been retained to represent the three subjects. After a short time, Mr Wischkaemper left and returned to his office.

As no positive identification had been made on Patricia or Ezel [sic] Bibbs, the decision was to release the two, pending filing of charges. As they were released from the detention center, I escorted them to the Patrol Captain's Office and again explained why they were detained.

I then asked for consent to search the bags and sacks which had been taken from the van. Both Ezel [sic] and Patricia Bibbs refused to sign the consent form and again stated that they wished to speak to an attorney. The two were turned over to Mr Wischkeamper and they left. I then began to prepare a search warrant. Mr Wischkaemper returned to the PD to await the arrival of Ms Kelso. I talked with Mr Wischkaemper about the necessary search of the bags and he agreed to sign the consent to search if he could be present during the search. We

brought the bags and sacks into the patrol office and searched them. Nothing of evidentiary value was found.

As no physical evidence was found linking Ms Kelso to this offense, it was decided that she too would be released pending filing of charges. Upon her return from UMC, Ms Kelso was fingerprinted, photographed and released to Mr Wischkaemper.

Investigation continues.

Report Control Information

Reporting Officer:
WARD R — Number: P00990
Date: 11/17/98 — Time: 15:45
Typed by: WARD
Number: P990
Date:11/17/98 — Time: 15:49
Approving Officer:
WARD R — Number: P00990
Date: 11/23/98 — Time: 14:35

LUBBOCK POLICE DEPARTMENT

-Case Supplement Report-

Reported
Date: 11/16/98 Time: 16:18 Case: 98-046570
(009) Page 1

Code: 31.03 PC	Crime: ATT. THEFT	Class:
Occurrence Date: 11/16/98	Day: MONDAY	Time: 15:15
Status: AS ASSIGNED	Closing Officer:	P00176 JOBE KEITH

Location: 4215 S. LOOP 289, LU WAL MART SUPER CENTER RD: 62

NARRATIVE

THE VICTIM (ELENITA HESTER) WAS CONTACTED AND ASKED IF SHE REMEMBERS EITHER OF THE SUSPECTS TOUCHING HER CAR OR GIVING HER ANYTHING THAT MAY HAVE FINGERPRINTS ON IT. THE VICTIM ADVISED NO TO BOTH QUESTIONS.

Report Control Information -Page 1-

Reporting Officer: OVERLAND M	Number: P00350
Date: 11/18/98	Time: 07:45
Typed by: OVERLAND Number: P350	
Date:11/18/98	Time: 08:16
Approving Officer: WARD R	Number: P00990
Date: 11/23/98	Time: 14:36

LUBBOCK - POLICE - DEPARTMENT

-Case Supplement Report-

Reported
Date: 11/16/98 Time: 16:18 Case: 98-046570
(010) Page 1

Code: 31.03 PC Crime:
ATT. THEFT Class:

Occurrence
Date: 11/16/98 Day: MONDAY Time: 15:15
Status:
AS ASSIGNED Closing Officer: P00176 JOBE
KEITH

Location: 4215 S. LOOP 289, LU RD: 62
WAL MART SUPER
CENTER

INVOLVED PERSONS

INV. PARTY-3: DOB: 03/01/52
HESTER RANDY Race: W
3520 57TH ST., LU Sex: M

Apt: State: TX Zip: Phone:
806 796-1073 Adu/Juv: A

POB: Hair: Eye: Hgt: Wgt: Bld:
Business Name: Phone: 806 765-5541
CAPROCK BUS. FORMS
1211 AVE F
LUBBOCK, TX 79408

NARRATIVE

WHILE WORKING THE FRONT DESK, I RECEIVED A TELEPHONE CALL FROM A MAN WHO IDENTIFIED HIMSELF AS RANDY HESTER, HUSBAND OF THE VICTIM OF THIS OFFENSE.

MR. HESTER STATED THAT THEY, HE AND HIS WIFE, HAD WATCHED THE TELEVISION NEWS BROADCAST & VIEWED THE LISTED SUSPECTS DURING THAT BROADCAST.

MR. HESTER STATED THAT MRS. HESTER, UPON GETTING "HER FIRST GOOD LOOK AT THEIR PICTURES," SHE (MRS. HESTER) HAS NOW DECIDED THAT "THEY ARE NOT THE SAME PEOPLE WHO HAD APPROACHED HER AT WAL-MART."

Report Control Information -Page 1-

Reporting Officer:
RYLANT DANNY Number: P00536
Date: 11/18/98 Time: 19:30
Typed by: SHEGITZ
Number: 018015
Date:11/18/98 Time: 22:47
Approving Officer:
HUDGENS SCOTT Number: P00502
Date: 11/18/98 Time: 22:56

LUBBOCK ~ POLICE ~ DEPARTMENT

-Case Supplement Report-

Reported Date: 11/16/98	Time: 16:18	Case: 98-046570 (011) Page 1
Code: 31.03 PC	Crime: ATT. THEFT	Class:
Occurrence Date: 11/16/98	Day: MONDAY	Time: 15:15
Status: AS ASSIGNED	Closing Officer:	P00176 JOBE KEITH

Location: 4215 S. Loop 289 LU
Wal Mart Super Center Rd:62

INVOLVED PERSONS

INV. PARTY-5:
HUNN PATTI STEELE
RT. 4 BOX 256, TAHOKA

DOB: 06/05/59
Race: W
Sex: F

Apt: State: TX Zip: 79373
Phone: 806 924-7476 Adu/Juv: A

POB: Hair: RED Hgt: 506
Eye: BLU

Wgt: 170
Bld:

Business Name:
WALMART
702 W. LOOP 289
LUBBOCK, TX 79416

Phone: 806 793-9686

NARRATIVE

ON 11-18-98 I CONTACTED (IP-5) PATTI HUNN, SECURITY OFFICER FOR WALMART SUPERCENTER, 702 W. LOOP 289, LUBBOCK. I ADVISED HER OF THE NATURE OF THIS INVESTIGATION. I ALSO ASKED IF SHE WOULD MAKE AVAILABLE TO ME HER VIDEOTAPES FROM 11-16-98. MS. HUNN AGREED TO HAVE ME COME TO WALMART AND PICK UP THE TAPES.

THE TAPES SHOW THE ENTRANCE AND EXIT AREAS OF WALMART. THE TAPES LABELED F DOORS ARE FROM THE EAST FACING NORTH DOORS (TAPES #1 AND 14). TAPES #1 STARTS AT APPROXIMATELY 0500 HOURS AND TAPE #14 STARTS AT APPROXIMATELY 1200 HOURS. TAPES LABELED GRO-DOORS AND GM DOORS ARE FROM THE EAST FACING SOUTH DOORS (TAPES #2 AND 13). TAPE #2 STARTS AT APPROXIMATELY 0500 HOURS AND TAPE #13 STARTS AT APPROXIMATELY 1200 HOURS.

LATER ON 11-18-98 I VIEWED THE VIDEO TAPES AT THE POLICE DETECTIVE DIVISION. THERE IS NO TIME OR DATE DUBBING ON THE TAPES SO A SPECIFIC TIME OF DAY CANNOT BE DETERMINED.

ON TAPE #14 (F DOORS 12:00 NOON 11-16-98) I DID FOUND A WOMAN MATCHING THE SUSPECT DESCRIPTION, TALLER BLACK WOMAN WEARING A BROWN SUIT AND LONG COAT. (Oh 46m 50s on the vcr counter on the JVC vcr bearing serial #131E1182). THIS WOMAN IS ALREADY INSIDE THE STORE AND HAS A BASKET WITH BOXES IN IT. SHE AND ANOTHER FEMALE LEAVE WALMART TOGETHER.

THE SECOND FEMALE IS A BLACK WOMAN WEARING A DRESS. PHOTO'S WILL NEED TO BE MADE FROM THIS VIDEOTAPE AND SHOWN TO THE VICTIM IN ORDER TO DETERMINE IF THESE ARE THE SAME WOMAN THAT APPROACHED HER INSIDE WALMART. I HAVE CHECKED THE VCR TAPES BUT AT THIS TIME HAVE BEEN UNABLE TO LOCATE WHEN AND WHERE THESE WOMEN ENTERED THE STORE. THERE IS A GAP BETWEEN THE END OF THE #1 TAPE AND THE BEGINNING OF THE #14 TAPE. IT IS UNKNOWN HOW LONG THIS GAP IS.

AT THIS TIME THIS INVESTIGATION WILL CONTINUE.

Report Control Information -Page 1-

Reporting Officer:
MCNEILL BRIAN
Date: 11/19/98
Typed by: MCNEILL
Number: P165
Date:11/19/98
Approving Officer:
WARD R
Date: 11/23/98

Number: P00165
Time: 12:00

Time: 12:00

Number: P00990
Time: 14:37

LUBBOCK ~ POLICE ~ DEPARTMENT

-Case Supplement Report-

Reported Date: 11/16/98	Time: 16:18	Case: 98-046570 (012) Page 1
Code:	Crime: ATT. THEFT	Class:
Occurrence Date: 11/16/98	Day: MONDAY	Time: 15:15
Status: AS ASSIGNED	Closing Officer:	P00176 JOBE KEITH
Location: 4215 S. LOOP 289, LU WAL MART SUPER CENTER		RD: 62

INVOLVED PERSONS

INV. PARTY-06:	DOB:
PETERSON KRUAWAN	Race: O
508 N. GENOA, LU	Sex: F
Apt: State:	Zip: Phone: 792-1093 Adu/Juv: A
POB: Hair:	
Eye: Hgt:	Wgt: Bld:
Business Name:	Phone:

INV. PARTY-07:
PETERSON PETE JAMES
508 N GENOA, LU

DOB: 11/04/42
Race: B
Sex: M

Apt: State: TX Zip: 71496
Phone:
806 792-1093 Adu/Juv: A

POB: Hair:
Eye: Hgt: Wgt: Bld:

Business Name:
1611 10TH ST.
LUBBOCK, TX 79401

Phone: 806 743-7462

NARRATIVE

6 (KRUAWAN PETERSON) AND IP-7 (PETE PETERSON) CALLED THE DETECTIVE DIVISION ON 11-18-98, (11:00) HOURS, ADVISING THEY SAW THE NEWS REPORTS INVOLVING THE BASKETBALL COACHES BEING ARRESTED AND THE SAME TYPE OF ATTEMPTED THEFT HAPPEN TO IP-6 ON THE SAME DAY (11-16-98) BETWEEN 1:00 AND 1:20 AT THE 4TH STREET AND LOOP 289 WAL-MART.

IP-6 AND IP-7 INITIALLY DID NOT WANT TO GIVE THEIR NAMES BECAUSE OF POSSIBLE NEWS OR COURT ACTIVITY. THEY WERE ADVISED FOR THE INFORMATION TO BE VALID ANY INFORMATION ABOUT THE CRIME WOULD HAVE TO BE VERIFIED AND THEY WERE ASSURED THAT THEIR NAMES WOULD BE PROTECTED INFORMATION AND CONFIDENTIAL.

KRUAWAN PETERSON AGREED AND EXPLAINS THAT SHE WAS APPROACHED BY A BLACK FEMALE, SLIM-MEDIUM BUILD, 5"7", (NOT SURE OF HEIGHT), WEARING HOSPITAL TYPE SCRUBS, SIMILAR TO WHAT A NURSE WOULD WEAR. THE SCRUBS HAD SOME TYPE OF FLOWER PRINT DESIGN WITH MATCHING PANTS. THE LADY TOLD IP-6 THAT SHE JUST FOUND A BLACK PURSE WITH A LARGE SUM OF MONEY AND A NOTE. THE LADY WENT OUT OF HER WAY TO SHOW IP-6 THE BLACK PURSE AND A NOTE. THE NOTE SAID SOMETHING ABOUT $150,000 AND THE PERSON TRIED TO MAKE IP-6 READ THE NOTE. IP-6 WOULD NOT READ THE NOTE AND TOLD THE LADY SHE DID NOT WANT TO GET INVOLVED IN ANYTHING. THE LADY OPENED THE PURSE AND SHOWED IP-6 A LARGE SUM OF MONEY, WRAPPED WITH SOME TYPE OF MONEY BAND OR PAPER BAND. ANOTHER BLACK FEMALE APPEARED, WEARING A BROWN JACKET (MEDIUM LENGTH) AND BROWN SLACKS, VERY WELL DRESSED, AND A BLACK HEAD BAND AROUND HER HEAD. THIS LARGER SIZE, HEAVIER SET LADY (UNKNOWN HEIGHT) WAS WEARING A LOT OF HEAVY MAKE-UP. THE THREE LADIES STARTED TALKING ABOUT THE FOUND MONEY. IP-6 WAS TOLD IF THEY ALL THREE CAME UP WITH $5,000 IN CASH THE HEAVY SET BLACK FEMALE, WHO SAID SHE WORKED AT THE BANK INSIDE WAL-MART, WOULD LEAVE THE MONEY AS A DEPOSIT WITH THE BANK. THE FOUND MONEY COULD THE BE SPLIT BETWEEN THE THREE PERSONS. IP-6 WOULD GET AROUND $45,000 OR MORE. IP-6 BECAME UNCOMFORTABLE ABOUT THE

SITUATION AND TOLD THE LADIES TO JUST TURN IT IN TO WAL-MART MANAGEMENT. THESE EVENTS APPARENTLY TOOK PLACE INSIDE WAL-MART. IP-6 LEFT WAL-MART IN HER 1993 WHITE LINCOLN BUT WENT BACK A SHORT TIME LATER AND SAW THE BLACK LADIES AGAIN, OUTSIDE THE BUILDING. IP-6 ASKED THEM IF THEY TURNED THE MONEY IN AND THEY SAID THEY TRIED BUT THE MANAGEMENT AT WAL-MART WAS SO RUDE THAT THEY KEPT THE PURSE AND THE MONEY. IP-6 DROVE AWAY AND AS SHE WAS LEAVING SAW THE TWO BLACK FEMALES GET INTO AN OLD RED CAR.

ON 11-19-98, 1330 HOURS, IP-6 WAS VISITED AT HER HOME BY DETECTIVES OVERLAND AND MCNEILL FOR FACE TO FACE INTERVIEW AND TO VERIFY INFORMATION. TWO PHOTO LINE-UP'S WERE PREPARED, FOLDER #1 CONTAINED POLICE FILE PHOTO OF VANETTA KELSO IN (POSITION #3). FOLDER #2 CONTAINED POLICE FILE PHOTO OF PATRICIA BIBBS IN POSITION #5. THESE PHOTO LINE-UP'S WERE PREPARED FOR USE IF NEEDED. EACH PHOTO LINE-UP FOLDER HAD PICTURES OF 5 OTHER BLACK FEMALES OF SIMILAR PHYSICAL CHARACTERISTICS, SELECTED AT RANDOM FROM POLICE FILE PHOTO'S.

DETECTIVE MCNEILL HAD SPENT NUMEROUS HOURS (11-18-98, UNTIL 3:30 AM) GOING THROUGH AND VIEWING FOUR SURVEILLANCE VIDEO TAPES, COLLECTED FROM WAL-MART, 4TH STREET AND LOOP 289, AS EVIDENCE. TWO INDIVIDUAL PERSONS ON THE SURVEILLANCE TAPES WERE SELECTED BY DETECTIVE MCNEILL AS POSSIBLE

SUSPECTS OF THIS CRIME, BASED ON CLOTHING AND OTHER DESCRIPTIONS. THE STILL FRAMES HAD BEEN MADE INTO PHOTO'S AND THESE PHOTO'S WERE TAKEN ALONG DURING THE INTERVIEW WITH IP-6 ON 11-19-98.

DURING THE INTERVIEW WITH IP-6 ON 11-19-98, 1330 HOURS, KRUAWAN PETERSON STATED THAT SHE HAD SEEN LAST NIGHTS NEWS REPORT OF THE COACHES FROM HAMPTON UNIVERSITY. IP-6 ADVISED NEITHER OF THE COACHES WERE THE TWO LADIES SHE DEALT WITH AT THE 4TH STREET AND LOOP 289 WAL-MART STORE. DETECTIVE MCNEILL SHOWED IP-6 THE TWO PHOTO'S OF POSSIBLE NEW SUSPECTS AND IP-6 ADVISED THEY WERE NOT THE SAME PEOPLE EITHER. IP-6 WENT ON TO SAY THAT ONE OF THE BLACK FEMALES, WITH THE BROWN SUIT, LEFT OUT THE SOUTH MAIN-ENTRANCE/EXIT DOOR AT THE SAME TIME IP-6 WALKED OUT. THE 4TH STREET AND LOOP 289 WAL-MART TAPES ARE IN COLOR BUT THE DATE/TIME IS NOT RECORDED ON THE TAPE. ADDITIONAL REVIEW OF THE NEW TAPES WILL BE CONDUCTED FOR POSSIBLE NEW SUSPECT INFORMATION. THE TWO PHOTO LINE-UP'S THAT WERE PREPARED EARLIER, CONTAINING PHOTO'S OF VENETTA KELSO AND PATRICIA BIBBS, WERE NEVER SHOWN TO IP-6 BECAUSE SHE HAD ELIMINATED THESE PERSONS AS SUSPECTS DURING HER VIEWING OF THE MEDIA NEWS REPORTS.

THIS INVESTIGATION HAS NOW FOCUSED ON INDIVIDUALS OTHER THAN VANETTA KELSO PATRICIA BIGGS [sic], AND EZIL BIGGS [sic] AND THEY

SHOULD BE ELIMINATED AS SUSPECTS BASED ON THE FOLLOWING:

IP-6 (KRUAWAN PETERSON) WAS APPROACHED BETWEEN 1:00 AND 1:30 PM AT WAL-MART, 4TH STREET AND LOOP 289, AND THE PERSONS THAT ATTEMPTED THE THEFT AT THAT TIME ARE NOT THE HAMPTON BASKETBALL COACHES. IT WAS LEARNED TODAY AT CITY HALL THAT THE HAMPTON COACHES ARRIVED IN LUBBOCK AROUND THAT TIME OR POSSIBLY LATER.

THE ORIGINAL VICTIM HAS NOTIFIED THE POLICE DEPARTMENT THAT AFTER WATCHING NEWS COVERAGE OF THE ARRESTED INDIVIDUALS SHE DOES NOT BELIEVE THEY ARE THE PERSONS WHO ATTEMPTED THE THEFT.

VIDEO TAPES FROM THE QUAKER AND LOOP 289 WAL-MART SHOW THE HAMPTON COACHES DID NOT ENTER WAL-MART UNTIL AROUND 1615 HOURS, ALMOST ONE HOUR AFTER THIS REPORTED ATTEMPTED THEFT.

INVESTIGATION CONTINUES . . .

Report Control Information

Reporting Officer:
OVERLAND M
Date: 11/19/98
Typed by: OVERLAND
Number: P350

Number: P00350
Time: 16.15

Date:11/19/98 Time: 16:17
Approving Officer:
WARD R Number: P00990
Date: 11/23/98 Time: 14:39

LUBBOCK POLICE DEPARTMENT

-Case Supplement Report-

Reported Date: 11/16/98	Time: 16:18	Case: 98-046570 (013) Page 1
Code: 31.03 PC	Crime: ATT. THEFT	Class:
Occurrence Date: 11/16/98	Day: MONDAY	Time: 15:15
Status: AS ASSIGNED	Closing Officer:	P00176 JOBE KEITH
Location: 4215 S. LOOP 289, LU WAL MART SUPER CENTER		RD: 62

NARRATIVE

UP-DATE INVESTIGATION:

NO OTHER CASES OF THIS TYPE HAVE BEEN REPORTED SINCE THE TWO ALREADY REPORTED. I HAVE CONDUCTED SEVERAL SPOT SURVEILLANCES OF THE SOUTH PLAINS MALL, SUPER K-MART, AND

BOTH WAL-MART STORES, WITHIN THE PAST WEEK(S). THE TEXAS DEPARTMENT OF PUBLIC SAFETY (INTELLIGENCE SERVICE) IS BEING CONSULTED ABOUT OTHER CITIES IN TEXAS (AND OTHER STATES) HAVING THESE TYPE(S) OF CRIMES, FREQUENCY, SUSPECT AND VICTIM INFORMATION, ETC. IF THE ACTORS WERE INVOLVED IN ORGANIZED CRIME ACTIVITY, THEN MULTIPLE FELONY CRIMES ARE STILL OCCURRING AND THE ACTORS HAVE PROBABLY MOVED TO OTHER CITIES.

CRIME ANALYSIS OFFICE (ROBERT STACK) IS RESEARCHING AND EXAMINING POLICE REPORTS TO DISCOVER THE APPROXIMATE NUMBER OF PIGEON DROP SCHEME VICTIMS IN LUBBOCK FOR ABOUT THE PAST 5 YEARS. ROBERT STACK CONTACTED DPS INTELLIGENCE AND ALERTED THEM ABOUT THIS CRIME(S) AND REQUESTED RESEARCH MATERIALS ABOUT POSSIBLE CRIMINALS. ROBERT STACK WAS TOLD THE RESEARCH MAY TAKE SOME TIME TO COMPLETE. I CAN REMEMBER WORKING THE BELOW LISTED CASES INVOLVING THIS TYPE OF CRIME:

96-3668 81 YEAR OLD WHITE FEMALE VICTIM LOST $6,000 IN CASH. TWO WHITE FEMALE SUSPECTS, AT WAL-MART, 4215 S. LOOP 289.

94-11502 44 YEAR OLD MEDICAL DOCTOR, FEMALE, FROM INDIA, LOST $15,000 IN CASH, TWO BLACK FEMALE SUSPECT, SOUTH PLAINS MALL.

93-28263 75 YEAR OLD WHITE FEMALE VICTIM, LOST $15,000 IN CASH. TWO WHITE FEMALE SUSPECTS, AT UNITED SUPER MARKET ON 4TH STREET AND SLIDE ROAD.

SEVERAL OTHER DETECTIVES HAVE ALSO WORKED THESE TYPES OF CRIMES AND CRIME ANALYSIS RESEARCH SHOULD REVEAL THE SERIOUSNESS AND MAGNITUDE OF THESE CRIMES IN LUBBOCK AND OTHER CITIES. THIS RESEARCH WILL TAKE SOME TIME.

I RECEIVED A MAILING FROM MR. JON CROW OF THE NATIONAL ASSOCIATION OF BUNCO INVESTIGATORS, INC., P.O. BOX 287, MARYLAND LINE, MD 21105. THE MAILING CONTAINED AN INVESTIGATORS HANDBOOK (39 PAGES) OF BUNCO CRIMES INCLUDING DETAILED INFORMATION ABOUT THE PIGEON DROP SCHEMES. COPY OF THE BOOKLET IS ATTACHED TO THIS REPORT.

Report Control Information -Page 1-

Reporting Officer:
OVERLAND M
Number: P00350
Date: 12/04/98
Time: 10:10
Typed by: OVERLAND
Number: P350
Date:12/04/98
Time: 10:09

Approving Officer:
WARD R
Date: 12/21/98

Number: P00990
Time: 16:43

LUBBOCK ~ POLICE ~ DEPARTMENT

-Case Supplement Report-

Reported Date: 11/16/98	Time: 16:18	Case: 98-046570 (014) Page 1
Code: 31.03 PC	Crime: ATT. THEFT	Class:
Occurrence Date: 11/16/98	Day: MONDAY	Time: 15:15
Status: AS ASSIGNED	Closing Officer:	P00176 JOBE KEITH

Location: 4215 S. LOOP 289, LU
WAL MART SUPER
CENTER RD.62

NARRATIVE

NO NEW INFORMATION HAS DEVELOPED IN THIS CASE WITHIN THE PAST 60 DAYS. THE DEPARTMENT OF PUBLIC SAFETY HAS NOT TO THIS DATE FORWARDED ANY INFORMATION ABOUT THESE TYPES OF ACTIVITIES/CRIMES.

CASE STATUS: IN/ACTIVE

Report Control Information -Page 1-

Reporting Officer:
OVERLAND M Number: P00350
Date: 02/24/99 Time: 08:20
Typed by: OVERLAND
Number: P350
Date: 02/24/99 Time: 08:20
Approving Officer:
MCQUIRE M K Number: P00538
Date: 02/24/99 Time: 14:10

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

PATRICIA AND EZIL BIBBS, VANETTA KELSO, and HAMPTON UNIVERSITY	§	
VS.	§	
CITY OF LUBBOCK, and POLICE CHIEF KEN WALKER, OFFICERS DAVID HOUSER, KEITH JOBE, BRIAN MCNEILL, R. HEARRON and MIKE OVERLAND, all individually and in their official capacities, UNKNOWN EMPLOYEES OF THE EMERGENCY MEDICAL SERVICES AT UNIVERSITY MEDICAL CENTER, all in their individual capacities	§	CIVIL ACTION NO. 5:99-CV-193-C

AFFIDAVIT OF VANETTA KELSO

I, Vanetta Kelso, am over the age of eighteen (18) years and a resident of Mississippi. I hereby give this statement voluntarily and according to my own personal knowledge. I am under no legal disability that would prevent me from making this affidavit.

1. I am currently employed as the Head Women's Basketball Coach at Tougaloo College in Tougaloo, Mississippi. November 16, 1998, I was employed as the Assistant Women's Basketball Coach at Hampton University in Hampton, Virginia.

2. On November 16, 1998, I traveled to Lubbock, Texas with the Hampton University Women's Basketball Team, Coach Patricia Bibbs and her husband, Ezil Bibbs and Assistant Coach Walter Mebane to compete in a basketball game against Texas Tech scheduled for November 17, 1998.

3. At approximately 4:00 p.m. on November 16, 1998, Coach Bibbs, Ezil and myself proceeded to the local Wal-Mart to purchase items for the team and a few personal items. Coach Bibbs and Ezil completed their shopping at approximately 4:34 p.m. I was in the check-out line when they were about to exit the store. I handed the rental van keys to Coach Bibbs and told her I would catch up with them.

4. I completed my shopping at approximately 4:41 p.m. and immediately exited Wal-Mart. I saw Coach Bibbs and Ezil placing their items in the van.

5. Ezil and I passed each other in the parking lot of Wal-Mart as he returned to the store to purchase additional items. I got into the van in the driver's seat and Coach Bibbs sat in the front passenger's seat.

6. I decided to drive the van closer to the front doors of Wal-Mart to make it easier to pick up Ezil when he exited the store. I started to park in the fire lane, but Coach Bibbs said, "Girl we better not park here". We continued to search for a parking space and ended up parking in the same row we were initially in.

7. While waiting for Ezil to exit Wal-Mart, Coach Bibbs and I saw a police unit drive down the row in front of us. As the officer, (later discovered to be Officer Jobe), looked at us, I nodded to him in

a friendly manner. The police unit came down the row where we were located, and parked slightly beyond our van. The officer approached Coach Bibbs' side of the van and I let down her window. The officer then asked "Are you the ladies who reported finding a black purse or bag?" Coach Bibbs and I responded "No". The officer then returned to his patrol car and drove away.

8. Shortly thereafter, Ezil exited the store and got in the van. I proceeded to exit the parking lot. I stopped at the stop sign and Ezil instructed me to turn right onto Loop 289 South. I drove less than a block because traffic had stopped for a red light.

9. I was in the center lane of traffic and through my rearview mirror, I noticed two police units with flashing lights. Coach Bibbs immediately asked if I were speeding or if I had not used my signals. I said "no". Then I stated that the police must be trying to get around us because I knew my speed was within the limit because I had just exited the parking lot and there were four to five vehicles that had stopped in front of me.

10. We dismissed the idea that the police were after us because I knew I had not violated any laws and I proceeded to drive toward our destination, the Holiday Inn at South Loop 289. We were in very close proximity to the Holiday Inn, which in our estimate was located less than a mile from Wal-Mart.

11. As I continued to drive, I noticed the two police units were still behind me. I saw the visual signals on the police units, but I never heard any audible signals. Ezil stated, "Vanetta, they must be after you, go ahead and pull over". Loop 289 South is a service type highway and there did

not appear to be sufficient space for me to safely pull the van over and out of the flow of traffic. At this point we were approximately one block from the Holiday Inn. I decided to continue the one block to the Holiday Inn. Coach Bibbs told me to slow down to a very slow speed so the police would know that we were not trying to evade them. I slowed the van down to a very slow speed. I also turned on my right turn signal to indicate that I would be making the next right turn into the Holiday Inn parking lot.

12. I pulled the van into the Holiday Inn parking lot and parked. I attempted to get out of the van to ask the officer what the problem was. Officer Houser then instructed me to get back into the vehicle. I complied.

13. Officer Houser approached the van and asked me for my driver's license and insurance. I immediately retrieved my Tennessee issued driver's license from my purse and the Avis rental agreement from the glove compartment and handed them to Officer Houser. The time was approximately 4:57 p.m.

14. Houser returned to the direction of his patrol car and I observed three police units and one unmarked blue car located behind us in the parking lot. Coach Bibbs, Ezil and I commented about how excessive this was considering the fact that we had done nothing wrong.

15. Officer Houser returned to the van and requested identification from Coach Bibbs and Ezil. They immediately produced their Louisiana driver's licenses. Houser approached the other officers with the Bibbses identification. He later returned to the van and asked me questions about my residency in Tennessee or if I

had a telephone number there in Tennessee. I told him that my number was no longer working.

16. Officer Houser then began to question the Bibbses about their residency in Louisiana. The Bibbses were fully cooperative. Coach Bibbs informed Houser that she was the Head Women's Basketball Coach at Hampton University and that we were in Lubbock to play Texas Tech on the next evening (Tuesday, November 17, 1998) and we were staying at the Holiday Inn with our team. Coach Bibbs and Ezil were both wearing Hampton University warm-ups with the Hampton insignia on the left side of the chest. Houser ignored Coach Bibbs and continued to question the three of us. We continuously asked him why we were being detained, but he would not respond.

17. After repeatedly asking the officer why we were being detained and receiving no response, Ezil informed Houser that we would not answer any further questions until we were informed of why we were stopped and why we were being detained. Coach Bibbs, Ezil and I were very nervous and leery at this point because of the excessive amount of patrol cars present for what could have been no more than a routine traffic stop.

18. Officer Houser left our van and returned to the other officers who had congregated in a circle. They were talking and looking at our licenses. One police officer left the group and entered the Holiday Inn. After several minutes, this officer returned to the other officers. Coach Bibbs, Ezil and I remained in the van and discussed the perplexing events that were occurring.

19. Approximately forty-five (45) minutes to an hour passed and we were still being detained in the van with absolutely no knowledge of why we were being detained. I began to write down the tag numbers of the police units on a piece of scrap paper. Coach Bibbs and Ezil helped me gather the information by calling out the numbers to me. The first marked patrol car (tag number 678-978) was parked directly behind the van. Coach Bibbs was eventually placed in this unit. The second marked patrol car was located slightly behind the van and angled to the right (tag number 694-449). I was eventually placed in this unit. The third vehicle was an unmarked car which was parked parked beside the second patrol car (tag number PGL-46X). The fourth vehicle was the third marked patrol car which was parked directly behind and to the right of the second patrol car (tag number 651-032). Ezil Bibbs was eventually placed in this unit.

20. Eventually, Officer Houser returned to our van and asked Coach Bibbs and I to exit the van and follow him. Ezil was instructed to stay in the van. We followed Houser to where the other officers were located and waited for further instructions.

21. I began to write down the names of all the police officers present by looking at their badges. I had difficulty seeing Officer Hearron's name and he noticed what I was doing. Officer Hearron aggressively walked up very close to me (almost making contact) with his chest stuck out and stated, "Can you see my name now?" I responded, "Please, don't touch me because I don't want you to say that I attempted to assault you, nor do I want to say that police brutality

was involved." At that point, he stepped away and I wrote down Officer Hearron's name. I had written down Officer Houser's name first and then Officer Jobe. The other officer in the parking lot was in plain clothes. I asked one of the uniformed officers what the plain clothes officer's name was and was told it was McNeill. Detective McNeill overheard this and walked over to me in a very sarcastic manner and asked me if I knew how to spell it. I told him that I did as I wrote his name. There was one other plain clothes officer present earlier but he had left the parking lot when I exited the van. From my viewpoint while sitting in the van, this officer appeared to be the officer in charge. I later learned that he was Detective Mike Overland.

22. Officer Jobe called me to the side away from Coach Bibbs to ask me additional questions about my Tennessee driver's license and to inquire about where Coach Bibbs lived. I answered the questions regarding my driver's license and told him that he should direct his questions regarding Coach Bibbs to her. Officer Jobe further stated that my driver's license issued by the state of Tennessee looked "fishy". I told him that my license was state issued and if my license did look "fishy" that he would need to take that up with the Governor of Tennessee because they were state issued licenses. On numerous occassions, prior to being stopped in Lubbock, Texas, I have received numerous compliments from bankers and others who review licenses for identification purposes regarding how pretty Tennessee licenses are.

23. I then rejoined Coach Bibbs and we were told by Officer Houser that we were under arrest. This

occurred approximately 1½ hours from our initial stop in the Holiday Inn parking lot. We were told to put both hands behind our backs and we were handcuffed. One officer attempted to put the first set of handcuffs on my right wrist but my wrist was too large. The handcuffs bruised my right wrist and left a scar. A larger set of handcuffs were then placed on me.

24. Coach Bibbs and I looked at each other in total shock and disbelief. We had done absolutely nothing wrong and we still had no idea why we were being arrested. We repeatedly asked the officers why we were being arrested, but we never received a response.

25. Coach Bibbs and I were initially placed in the same police unit (tag number 694-449). We commented about the big mistake the police were making and how we could not believe that we had absolutely no idea of why we were being arrested.

26. After approximately 30 minutes of being in the patrol car, Coach Bibbs was transferred to a separate marked car (tag number 678-978). Minutes later, I got out of the patrol car and yelled to Ezil to lock the van doors because we had numerous personal items in the van. I was then told by an officer, that Ezil was about to be arrested also and to get back into the patrol car. I complied.

27. I then saw Ezil handcuffed and placed in the other marked patrol car (tag number 651-032). I heard a loud gun-like sound that occurred shortly after Ezil was placed in the patrol car. This frightened me and I immediately turned around to see if Ezil was alright. I saw Ezil in the patrol car and overheard one of the police

officers say that a car tire had exploded. I could see Coach Bibbs in the patrol car in front of me. She was talking to Coach Mebane and looking frantic.

28. After sitting in the patrol car for approximately fifteen(15) to twenty (20) minutes, I became very nauseated. On this particular date, I was approximately ten to twelve weeks pregnant with my second child. I found it extremely difficult to breathe because all of the doors of the police unit were closed, the windows were up and there was a bullet-proof shield which prevented adequate air ventilation. I began to feel very dizzy and had lower right-side abdominal pain. I then began to vomit in the patrol unit. I was yelling for assistance and after vomiting for five (5) to ten (10) minutes an officer opened the car door.

29. I attempted to get out of the vehicle, but could not because I was continuously vomiting and my hands were handcuffed behind me. This made exiting the vehicle extremely difficult. I was never offered any assistance by anyone in getting out of the patrol unit.

30. After exiting the patrol unit, I continued to vomit profusely. I pleaded and begged for someone to help me. I was constantly requesting and telling the officers over and over that I was pregnant and that I needed to go to the hospital. I was yelling frantically and I told the officers that they were trying to kill my baby because no one would offer any assistance. I continued to vomit for approximately five (5) to ten (10) minutes with my hands handcuffed behind me. I constantly begged to be taken to the hospital.

An officer stated that an ambulance had been called.

31. An EMS worker finally arrived. I still did not receive any assistance from the EMS worker or any of the police officers during this entire vomiting episode. They simply stood and watched me. The EMS worker told the police officers to step back because I was trying to spit and vomit on them. This was absolutely untrue. I was handcuffed from behind and I had no control over my vomiting. The EMS worker then stated that if I kept trying to spit and vomit on them he would put a towel in my mouth and see how I'd throw up then. In between the vomiting, I continued to plead to be taken to the hospital. I told the officers that I was not inhumane and I was not trying to vomit or spit on any of them. Vomit and mucus were exiting my nose and mouth and I was unable to wipe my face because I was still in handcuffs. I asked for someone to "Please, help me!" I was still not offered any assistance. I then leaned back into the patrol car, with hands still handcuffed behind me and wiped my face on the back of the car seat in order to get the vomit and mucus off my face.

32. Finally the ambulance arrived and I was still vomiting. The EMS worker immediately informed the ambulance crew that I was trying to vomit on everyone and that they (the ambulance crew) might have to stuff a towel in my mouth to get me to the hospital. An ambulance crew member, whom I later learned to be Vonda, looked shocked when she heard this. I frantically asked her to help me. I assured Vonda that she had nothing to worry about that I was not trying to vomit on anyone. I kept asking her

why the EMS worker would make that statement. I repeatedly pleaded to be taken to the hospital.

33. I was eventually assisted into the ambulance. I was still crying hysterically and asking the Lord to help me. Vonda, (the ambulance crew member) was talking to me and trying to calm me down. Vomit and mucus were all over my face again and I politely asked Vonda if she would wipe my face for me, because I was still in handcuffs. Vonda got a towel, wiped my face, and told me to blow my nose. I thanked her and she assured me that I would be taken to the hospital, but she needed to get my vitals first. I asked Vonda for the name of the EMS worker and I believe she said either "Frank" or "Fred". I began to cry as I thought about the implications he had made concerning the towel.

34. Vonda could not get my vitals because of the handcuffs. She told Officer Houser that I would need to be uncuffed so that she could get my vitals. Houser stated that if I didn't try anything he could handcuff me with both hands in front. I told Officer Houser that I had not done anything wrong to require handcuffs in the first place. Officer Houser then uncuffed me from behind and handcuffed me with my hands in front of me.

35. Vonda gave me a container to hold if I needed it for vomiting. I used it several times while in route to the hospital. Vonda was constantly talking to me trying to keep me calm so that she could get my vitals. She asked me my name and I told her "Vanetta". I asked for hers and she said "Vonda". I then stated that her name would be easy to remember because it began with a

"V". Vonda and I continued to talk while in route to the hospital. I told her where I was from and why I was in Lubbock. I explained to her that I had merely gone shopping for me and my team at Wal-Mart with the Head Coach and her husband, and I had no idea why I had been arrested. I became very emotional again while talking to Vonda.

36. We arrived at the University Medical Center and I rolled into the hospital emergency room – innocent and in handcuffs. Everyone in the emergency room was looking at me as Vonda assisted me off the stretcher. A lady by the name of "T-bone" assisted me in the admissions office. I asked if I could use the phone to call my husband. I was told that the phone could not dial long distance. I frantically asked for someone to please call my husband to inform him of what was going on.

37. A male police officer arrived at the hospital to monitor me. My handcuffs were eventually removed because the male officer could not follow me into the examination room.

38. I was examined by Dr. Skinner. My vitals, blood, etc. were taken. I explained the entire night's episode to Dr. Skinner. He examined my lower right abdomen because I was experiencing pain. Dr. Skinner stated that the abdominal pain could have been a muscle pull that occurred when I was handcuffed from behind. I asked Dr. Skinner if I could use the phone to call my husband and he said yes. I was later told by Dr. Skinner that the police officer on guard duty outside my hospital room stated that I could not make any phone calls. I was reluctant to take any medication because the nurse had informed me that it

would cause drowsiness. I wanted to be able to recall everything that was happening to me and I knew that I was eventually going to be transported to the police station.

39. An I.V. had been place in me and I questioned Dr. Skinner about it. He stated that I had lost a lot of fluids and the I.V. would replace them and prevent me from dehydrating. I asked Dr. Skinner for a pen and paper. At Dr. Skinner's request, one of the nurses brought me a note pad and a red ink pen.

40. I wrote down as much as I could about what had transpired throughout the evening. I also told several nurses in the hospital. Mary was one of the nurses I spoke to in lengthy detail.

41. I was told that I was about to be released from the hospital and taken to jail. I became upset again, not knowing what to expect once I arrived at the jail. Mary asked me if I wanted to walk out of the hospital or use a wheelchair. I requested a wheelchair. I informed Mary that I needed to go to the restroom before leaving the hospital. The police officer then followed us to the restroom.

42. Mary wheeled me out to the police officer's patrol car. I noticed that I had not seen this officer before. His name was Officer Bryant.

43. I had a plastic bag with me that I had received from Mary while in the hospital. This bag contained a few personal items. Officer Bryant asked to see the bag. He checked the contents and kept possession of it. Officer Bryant stated that because I had been dizzy and had vomited earlier, if I promised to be good, he would not have to use the handcuffs. I told Officer Bryant

that I did not give the other officers any reason to use the handcuffs. Officer Bryant stated that he tells everyone that to keep them calm. He pointed out that he had nothing to do with what had happened earlier and that he had been called to transport me to jail.

44. Once we arrived at the City Jail, Officer Bryant opened the back door so that I could exit. Officer Bryant carried my plastic bag with him and we proceeded inside the jail. Officer Bryant then inquired of Officer Harris, the in-take officer, as to what to do with me. Officer Harris indicated that Officers Bryant and Jobe would give further instructions. Officer Harris further stated that Coach Bibbs and Ezil had already been released and they were waiting for me to be booked and released. I became upset and began to cry.

45. Officer Harris stated that I was being charged with Attempted Felony Theft. I was asking question after question about how I was being charged for something that I had not done. My questions became more and more complicated for Officer Harris and Officer Bryant to answer. I began to ask about the fingerprints and the mug shots that I was about to take that would follow me for the rest of my life. I asked them how could an innocent person go through all of this. I told them that I was not part of any scam and they were making a BIG mistake! I attempted to calm myself down and apologized for my outburst toward them. Officer Bryant seemed to be disturbed with the entire way that everything was handled and the way that I had been treated all night.

46. Officer Bryant then began to ask me a series of questions. I was then asked to sign the questionnaire. I then followed Officer Bryant into another room for my fingerprints and mug shot to be taken. I then signed a fingerprint chart.

47. Officer Bryant and I spoke briefly while I was being fingerprinted. I explained to him my innocence and asked him if there had ever been any lawsuit against the police department. Officer Bryant stated that there had been lawsuits against the police department and against some of the other police officers. He said he had never been involved in any of the lawsuits.

48. Officer Bryant and I proceeded back into the main office area where I waited until my release. Officer Bryant eventually told me I was able to leave. He consulted with Officer Harris regarding additional papers that I needed to sign. Officer Harris asked if I had any personal belongings that had been taken from me. Officer Bryant stated that I only had the items that were in the plastic bag that I had when I left the hospital. Officer Harris then stated that I did not have to sign any other papers.

49. I followed Officer Bryant to the waiting room where Assistant Coach Mebane and Attorney Bill Wischkaemper were waiting. I began to cry when I saw Coach Mebane. He walked over to me and introduced me to Attorney Wischkaemper. We exited the building and got into Attorney Wischkaemper's car. Coach Bibbs and Ezil were waiting for us in the vehicle.

50. Attorney Wischkaemper informed us that the police were in the process of getting a court order to search the van. He asked if either of us had any objections to giving permission for the

van to be searched. He also asked if there was anything in the van that would be a problem to us. We all stated that there was nothing illegal in the van and we granted permission for the van to be searched. Wischkaemper stated that he would give permission to search the van only if he could be present. His request was granted.

51. Later, several police officers along with Wischkaemper came to the vehicle with our personal belongings and our bags of items purchased at Wal-Mart. We placed the items in Wischkaemper's vehicle and departed for the hotel.

52. In route to the hotel, Attorney Wischkaemper stated that the officers did not find anything in the van. He indicated that they seemed to be looking for a 3x5 card.

53. At approximately 12:15 a.m., we arrived at the Holiday Inn. Coach Mebane and Attorney Wischkaemper left to pick up the rental van. I proceeded to Coach Bibbs and Ezil's hotel room with them and we contacted Dr. Dennis Thomas, the Athletics Director for Hampton University. We then discussed the unbelievable events that had occurred.

54. It is my opinion, that race played a large role in our arrest on November 16, 1998. Within fifteen (15) minutes of our detainment, Coach Bibbs informed Officer Houser that she was the Head Women's Basketball Coach at Hampton University and that we were in Lubbock to play Texas Tech the following evening and were staying at the Holiday Inn. The officer would not listen to her and obviously chose to ignore this information. One must ask why? Both Coach Bibbs and Ezil were wearing Hampton University warm-ups with Hampton insignia on the left side of

the chest. This added more validity to Coach Bibbs statement of who she was and why we were in Lubbock, but the Lubbock City Police Officers just would not listen. The police were rude, offensive and sarcastic when I was writing down their names in the Holiday Inn parking lot. I was never offered any kind of assistance while I profusely vomited in the parking lot. With mucus and vomit all over my face, none of the officers assisted me. They just stood and stared at me. The EMS worker accused me of trying to vomit and spit on everyone. How absurd! I experienced severe abdominal pain, a swollen and bruised wrist, broken blood vessels in both eyes (which resulted from my continuous and profuse vomiting) and experienced severe emotional distress as a direct result of the actions of the Lubbock Police Department and the EMS worker on November 16, 1998. We were fully cooperative with the Lubbock Police Department at all times and their actions were certainly not in good faith.

/s/ Vanetta E. Kelso
Affiant

Date: September 22, 1999

SUBSCRIBED AND SWORN TO before me a Notary Public in and for the State of Mississippi on this 22nd day of September, 1999.

/s/ Curtis N. Shaw
NOTARY PUBLIC

My commission expires:
May 25, 2000

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

PATRICIA AND EZIL BIBBS, VANETTA KELSO, and HAMPTON UNIVERSITY	§	CIVIL ACTION NO. 5:99-CV-193-C
VS.	§	
CITY OF LUBBOCK, and POLICE CHIEF KEN WALKER, OFFICERS DAVID HOUSER, KEITH JOBE, BRIAN MCNEILL, R. HEARRON and MIKE OVERLAND, all individually and in their official capacities, UNKNOWN EMPLOYEES OF THE EMERGENCY MEDICAL SERVICES AT UNIVERSITY MEDICAL CENTER, all in their individual capacities	§	

AFFIDAVIT OF PATRICIA BIBBS

I, Patricia Bibbs, am over the age of eighteen (18) years and a resident of Hampton, Virginia. I hereby give this statement voluntarily and according to my own personal knowledge. I am under no legal disability that would prevent me from making this affidavit.

1. I am currently employed as the Head Women's Basketball Coach at Hampton University in Hampton

Virginia, and was so employed on November 16, 1998.

2. On November 16, 1998, I traveled to Lubbock, Texas with my team, my husband Ezil, and Assistant Coaches Vanetta Kelso and Walter Mebane, to compete in a basketball game against Texas Tech scheduled for November 17, 1998.

3. At approximately 4:00 p.m. on November 16, 1998, Kelso, Ezil and I proceeded to the local Wal-Mart to purchase items for the team and a few personal items. Ezil and I checked out of Wal-Mart at approximately 4:34 p.m. Prior to exiting the store, I saw Kelso in the check-out line. She handed the rental van keys to me and said she would meet us at the van. Ezil and I then exited the store. Realizing that I forgot a few items, Ezil re-entered Wal-Mart to purchase them. Kelso arrived at the van and got in the driver's seat. I was sitting in the front passenger's seat. While Ezil was still in Wal-Mart we tried to find a closer parking space. We ended up parking in the same row we were initially in, but closer to the store. While waiting for Ezil to exit Wal-Mart, Kelso and I were approached by a police officer who asked us if we were the ladies who reported finding a black purse or bag. We responded "No, we sure didn't". The officer returned to his patrol car and drove away.

4. Ezil got in the van at approximately 4:59 p.m. and with Kelso driving, we left the parking lot. Ezil instructed Kelso to make a right turn onto Loop 289 South. After traveling on Loop 289 South for a few minutes, Kelso noticed two police cars with their lights flashing behind us. I asked Kelso if she had violated any traffic laws. She stated "no". Kelso then stated that the officers must be trying to get around us to get to another vehicle because we had just

exited the parking lot and could not be speeding. We then dismissed the idea that the police were after us, because no traffic laws had been violated and we knew we had not violated any other laws. Also we never heard any sirens or other audibles from the police units; therefore, we thought the units would be passing through. Kelso continued driving toward our destination, the Holiday Inn at South Loop 289, which in our estimate was located less than a mile from Wal-Mart.

5. Ezil informed Kelso that it appeared that the police cars were following us. Kelso decided to continue on one block to the Holiday Inn because Loop 289 South is a service type highway and it did not appear to have sufficient space for the van to be safely pulled out of the flow of traffic. I told Kelso to slow down to a very slow speed so that the officers would know that we were not trying to evade them. Kelso complied. She also turned on her right turn signal to indicate that she would be making the next right turn, into the Holiday Inn parking lot.

6. After stopping in the parking lot of the Holiday Inn, Officer Houser approached the van and asked Kelso for her driver's license and insurance. She immediately provided this information to him. Houser returned to the direction of his patrol car at which point we noticed three patrol cars and one unmarked blue car in the Holiday Inn parking lot. The three of us joked about how this was extreme considering the fact that we had not violated any laws.

7. Officer Houser returned to the van and asked for identification from myself and Ezil. We immediately produced our Louisiana driver's licenses. He

approached the other officers with our identification. Houser later asked Kelso questions regarding her Tennessee driver's license.

8. Officer Houser questioned me and Ezil regarding our residency in Louisiana. I then informed Officer Houser that I was the Head Women's Basketball Coach for Hampton University and that we were in Lubbock to play Texas Tech tomorrow night (November 17, 1998) and were staying at the Holiday Inn with the team. Houser then continued to inquire about our Louisiana residency. He asked in a very sarcastic manner, "Why do you have Louisiana and Tennessee licenses if you say you are from Hampton?" I informed him that we owned homes in both Hampton, Virginia and Louisiana. I asked Houser several times why were we being stopped. He never responded. I again told him that I was the Head Women's Basketball Coach at Hampton University and that we were in Lubbock to play Texas Tech. I also told Houser that he could contact my friend and colleague Coach Marsha Sharp, the Head Basketball Coach for the Texas Tech Lady Raiders. Houser would not listen to me. Ezil and I were wearing blue Hampton University Lady Pirates warm-up's with the Hampton insignia on the left side of the chest. Ezil then informed Houser that we would not answer any additional questions until we were informed why we were being stopped and questioned.

9. Officer Houser left our van, and returned to the other officers. They congregated in a circle and were talking and looking at our licenses. One police officer left the group and entered the Holiday Inn. After several minutes this officer returned to the other officers.

10. Approximately thirty (30) minutes passed and we were still being detained in the van with absolutely no knowledge of why we were being detained. After an hour of being detained, Kelso began to write down the tag numbers of the police units on a piece of scrap paper. Ezil and I helped her in gathering the information.

11. Officer Houser returned to the van and asked Kelso and myself to exit the van and follow him. Ezil was instructed to stay in the van. We were led to a police unit located approximately 60 feet from the van. The other officers were located in this area and we waited for further instructions. Kelso began to write down the names on the badges of all the officers present. Officer Hearron noticed what Kelso was doing and he approached her very wildly and aggressively, pushing his chest very close to hers and asking in a sarcastic manner, "Can you see my name now?" Kelso responded, "Please don't touch me because I don't want you to say that I attempted to assault you, nor do I want to say police brutality was involved." Officer Hearron then stepped away. Following Kelso's inquiry, she was informed by one of the uniform officers that the officer in plain clothes was Detective McNeill. I then noticed Detective McNeill approach Kelso and ask very harshly, "Do you know how to spell it?"

12. After approximately 1½ hours from our initial stop in the parking lot of the Holiday Inn, Kelso and I were informed by Officer Houser that we were under arrest. We were told to turn around and place both our hands on the trunk of the patrol car. We were then told to put our hands behind our backs and we were handcuffed. Kelso and I looked at each other in total disbelief, shock and fear because we had done nothing wrong. We were then placed into

the back seat of a patrol car and we began to talk about the big mistake the police were making. We still had not been informed of why we were being detained and arrested nor were we mirandized.

13. After approximately 30 minutes of being in the patrol car, I, Patricia Bibbs, was placed in a separate patrol car and Kelso and Ezil were in separate patrol cars.

14. Assistant Coach Walter Mebane approached the patrol car I was in and asked an officer if he could speak to me. The officer said that he could, but that he could not speak to Kelso. I informed Mebane that I had no idea as to what was going on, or why we were being arrested, but to please call Dr. Dennis Thomas (Athletics Director for Hampton University) or someone to help us. I told Mebane "please don't let my players see me like this." Mebane informed me that one of the players had already seen me through the hotel window. My purse containing Dr. Thomas' number was in the van and Mebane asked one of the officers if he could get the purse out of the van. The officer brought my purse to Mebane. Mebane found the phone number and gave the purse back to the officer. While the officer was returning my purse to the van, I noticed there were several officers searching the inside of the van. I also noticed Kelso vomiting profusely. Several people, including police officers surrounded her. I was shocked to see that no one offered her any assistance. While I was sitting in the patrol unit looking at Kelso vomit profusely, I was jolted in my seat by a loud gun like sound. I panicked because it appeared to come from Ezil's direction. I found out later that one of the tires of the unmarked unit had blown out.

15. Ezil was later placed in the patrol car with me and we were transported to the city jail.

16. Once we arrived at the city jail we were denied access to the restroom and refused water. We were then booked and asked a series of questions, fingerprinted and photographed. I was allowed to make a phone call and I attempted to reach Coach Mebane to advise him of the situation, but was not able to contact him. I later discovered that Coach Mebane and Attorney Bill Wischkaemper were at the jail, but were not allowed to see us.

17. Ezil and I were placed in separate cells. I was placed in a cold, filthy cell with another female. I again requested water, but never received any.

18. After being in the cell for approximately 55-60 minutes, Detective Overland came to the cell and asked me if I wanted to answer a few questions. I asked him what had we been arrested for. For the first time, I received a response. Detective Overland stated that there was a victim of an attempted "pigeon drop" who had identified Kelso as one of the perpetrators. He told me what a pigeon drop was and I stated that we had not done anything wrong. He proceeded to ask me questions that I thought were not appropriate to answer without first talking to an attorney. At this point, I had still not been advised of my rights. Detective Overland stated that there seemed to be some confusion regarding my identification and it may be a case of mistaken identity. He stated that Ezil refused to speak to him about the incident. I told him that my husband's decision was also my decision. Detective Overland left the cell.

19. A few minutes elapsed after Detective Overland left the cell. I was then led back to the booking area where additional fingerprints were taken of me. Only my thumbs were printed the first time. I was then led to an area where I was reunited with Ezil.

20. An officer then told me that I was being released.

21. Ezil and I reviewed documents that we were asked to sign. After retrieving all of my personal items, I signed the releases.

22. An officer then stated that he needed to speak to us. We were led into an office where there were two plain clothes officers. The officers introduced themselves and stated that we were being released pending the victim filing charges.

23. I, Patricia Bibbs, asked the officer if we were charged. with Attempted Felony Theft. The officer responded that we had not been formally charged and no information would be given to the media. Ezil asked the officer about Channel 13, because we had noticed this news station with its cameras pointing at us while we were detained and handcuffed in the police units in the parking lot of the Holiday Inn. The Public Relations Officer indicated that they had not been contacted by any news media regarding this incident and he had not seen anything on television. He indicated that his office would not comment on this matter, but he could not control rumors.

24. The Public Relations Officer then asked for our permission to search the van. This surprised us because we had already observed several police officers search the inside of the van when we were in the parking lot of the Holiday Inn. Ezil and I indicated that we were not going to do anything until we consulted an attorney. The officer then stated that he would seek a court order.

25. An individual entered the room and indicated that an attorney and member of my staff were waiting for us. We were led to a waiting area where we were greeted by Coach Mebane and Attorney Bill Wischkaemper.

26. Attorney Wischkaemper, Coach Mebane, Ezil and I left in Wischkaemper's vehicle and traveled to his office. We then made contact with Dr. Dennis Thomas, the Athletic's Director for Hampton University.

27. Attorney Wischkaemper, Coach Mebane, Ezil and I traveled back to the police station to await Kelso's arrival from the hospital. Wischkaemper and Mebane proceeded inside the station, while Ezil and I waited in the vehicle.

28. From the vehicle, we could see inside the police station. We observed Coach Mebane and the mayor of Lubbock, Mayor Wendy Sitton, sitting next to each other. We also saw several officers standing outside. They seemed to be involved in a hardy conversation. We noticed that one of the officers were involved in our arrest.

29. We observed a patrol car carrying Coach Kelso arrive at the police station. After approximately 45 minutes, Kelso, Attorney Wischkaemper and Coach Mebane returned to the vehicle Ezil and I were in.

30. Attorney Wischkaemper informed us that the police were in the process of getting a court order to search the van. He asked if either of us had any objections to giving permission for the van to be searched. He also asked if there was anything in the van that would be a problem to us. We all stated that there was nothing illegal in the van and we granted permission for the van to be searched. Wischkaemper stated that he would give permission to search the van only if he could be present. His request was granted.

31. Later, Wischkaemper and several police officers came to the vehicle with our personal belongings and our bags of items purchased at Wal-Mart. We

placed the items in Wischkaemper's vehicle and departed for the hotel.

32. In route to the hotel, Attorney Wischkaemper stated that the officers did not find anything in the van. He indicated that they seemed to be looking for a 3x5 card.

33. At approximately 12:40 a.m., we arrived at the Holiday Inn. Coach Mebane and Attorney Wischkaemper left to pick up the rental van. Ezil and I proceeded to our hotel room and Kelso joined us. We then contacted Dr. Dennis Thomas.

34. It is my opinion, that race played a large role in our arrest on November 16, 1998. I, Patricia Bibbs, was not wearing any of the clothing that had been described by the alleged victim. Ezil and I were wearing blue Hampton University Lady Pirates warm-ups with Hampton insignia on the left side of the chest. I had repeatedly informed Officers Jobe and Houser that I was the Head Women's Basketball Coach at Hampton University and that we were in Lubbock to play Texas Tech and were staying at the Holiday Inn. I had asked Officer Houser to contact my friend Coach Marsha Sharp, the coach for the Texas Tech Lady Raiders. The officers would not listen to me. We were continuously accused of having false driver's licenses. I personally observed the rudeness and sarcasm of the officers when Kelso was writing down their names in the parking lot of the Holiday Inn. I was shocked and mortified to see that no uniformed officer offered her any assistance while she profusely vomited in the parking lot.

35. We later heard the Chief of Police, Ken Walker, make the comment that we were in the "wrong place at the wrong time". It's sad when the chief law enforcement officer considers, Wal-Mart, a public shopping store to be the wrong place and for 4:00 in the

afternoon to be the wrong time. It is obvious that in his opinion, we should not have been there. It is almost the turn of another century and we as a people are no better off than we were at the turn of the last century.

/s/ Patricia Bibbs Date: 9/22/99
Affiant

SUBSCRIBED AND SWORN TO before me a Notary Public in and for the State of Virginia on this 22nd day of September 1999.

/s/ April [illegible] Hart My commission expires:
NOTARY PUBLIC June 30, 2003

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

PATRICIA AND EZIL BIBBS, VANETTA KELSO, and HAMPTON UNIVERSITY	)	
VS.	)	
CITY OF LUBBOCK, and POLICE CHIEF KEN WALKER, OFFICERS DAVID HOUSER, KEITH JOBE, BRIAN MCNEILL, R. HEARRON and MIKE OVERLAND, all individually and in their official capacities, UNKNOWN EMPLOYEES OF THE EMERGENCY MEDICAL SERVICES AT UNIVERSITY MEDICAL CENTER, all in their individual capacities	)	CIVIL ACTION NO. 5:99-CV-193-C

AFFIDAVIT OF EZIL BIBBS

I, Ezil Bibbs, am over the age of eighteen (18) years and a resident of Hampton, Virginia. I hereby give this statement voluntarily and according to my own personal knowledge. I am under no legal disability that would prevent me from making this affidavit.

1. I am the husband of Coach Patricia Bibbs (the Head Women's Basketball Coach at Hampton University in Hampton Virginia).

2. On November 16, 1998, I traveled to Lubbock, Texas with Coach Bibbs, Assistant Coaches Vanetta Kelso and Walter Mebane, and the basketball team. The

team was scheduled to play Texas Tech on Tuesday, November 17, 1998.

3. At approximately 4:00 p.m. on November 16, 1998, Kelso, Coach Bibbs and I proceeded to the local Wal-Mart to purchase items for the team and a few personal items. Coach Bibbs and I checked out of Wal-Mart at approximately 4:34 p.m. Prior to exiting the store, we saw Kelso in the check-out line. She handed the rental van keys to Coach Bibbs and said she would meet us at the van. Coach Bibbs and I then exited the store. My wife then realized that she had forgotten a few items and asked if I would go back to purchase them. Kelso and I passed each other in the parking lot as I returned to the store to purchase the additional items.

4. I checked out of Wal-mart at approximately 4:57 p.m. and proceeded to the van. I walked down the row where the van had initially parked and I realized I had passed it when Kelso blew the horn. After entering the van, Coach Bibbs stated that they had moved to a closer parking space.

5. With Kelso driving, we left the Wal-Mart parking lot. I was seated on the left side, directly behind the driver's seat. I directed Kelso to turn right at the stop sign onto Loop 289 South. Our destination was the Holiday Inn at Loop 289 South which in my estimate was less than one mile from Wal-Mart. After traveling on Loop 289 South for a few minutes, Kelso indicated that she saw two police cars with their lights flashing behind us. Coach Bibbs asked Kelso if she had violated any traffic laws. She stated "no". Kelso then stated that the officers must be trying to get around us to get to another vehicle because we had just exited the parking lot and could not be speeding. We then dismissed the idea that the police were after us, because no traffic laws had

been violated and we knew we had not violated any other laws. Also we never heard any sirens or other audibles from the police units; therefore, we thought the units would be passing through. Kelso continued driving toward our destination, the Holiday Inn at South Loop 289.

6. I turned around and noticed that the police units were still behind us. I then informed Kelso that it appeared that the police cars were following us. Kelso decided to continue on one block to the Holiday Inn because Loop 289 South is a service type highway and it did not appear to have sufficient space for the van to be safely pulled out of the flow of traffic. Coach Bibbs told Kelso to slow down to a very slow speed so that the officers would know that we were not trying to evade them. Kelso complied. She also turned on her right turn signal to indicate that she would be making the next right turn, into the Holiday Inn parking lot.

7. After stopping in the parking lot of the Holiday Inn, Officer Houser approached the van and asked Kelso for her driver's license and insurance. She immediately provided this information to him. Houser returned to the direction of his patrol car at which point we noticed three patrol cars and one unmarked blue car in the Holiday Inn parking lot. The three of us joked about how this was extreme considering the fact that we had not violated any laws.

8. Officer Houser returned to the van and asked for identification from Coach Bibbs and I. We immediately produced our Louisiana driver's licenses. He approached the other officers with our identification. Houser later asked Kelso questions regarding her Tennessee driver's license.

9. Officer Houser questioned Coach Bibbs' and I regarding our residency in Louisiana. Coach Bibbs then informed Officer Houser that she was the Head Women's Basketball Coach for Hampton University and that we were in Lubbock to play Texas Tech tomorrow night (November 17, 1998) and were staying at the Holiday Inn with the team. Houser then continued to inquire about our Louisiana residency. He asked in a very sarcastic manner, "Why do you have Louisiana and Tennessee licenses if you say you are from Hampton?" Coach Bibbs informed him that we owned homes in both Hampton, Virginia and Louisiana. Coach Bibbs asked Houser several times why were we being stopped. He never responded. She told him again that she was the Head Women's Basketball Coach at Hampton University and that we were in Lubbock to play Texas Tech. She also told Houser that he could contact her friend and colleague Coach Marsha Sharp, the Head Basketball Coach for the Texas Tech Lady Raiders. Houser simply would not listen to her. Coach Bibbs and I were wearing blue Hampton University Lady Pirates warm-up's with the Hampton insignia on the left side of the chest. I then informed Houser that we would not answer any additional questions until we were informed why we were being stopped and questioned.

10. Officer Houser left our van, and returned to the other officers. They congregated in a circle and were talking and looking at our licenses. One police officer left the group and entered the Holiday Inn. After several minutes this officer returned to the other officers.

11. Approximately thirty (30) minutes passed and we were still being detained in the van with absolutely no knowledge of why we were being detained. After

an hour of being detained, Kelso began to write down the tag numbers of the police units on a piece of scrap paper. Coach Bibbs and I helped her in gathering the information.

12. Officer Houser returned to the van and asked Kelso and Coach Bibbs to exit the van. I was instructed to stay in the van. I sat in the van for approximately 30 minutes. During this time I saw Coach Bibbs and Kelso handcuffed and placed in the police unit. I felt helpless because I was told not to get out of the van.

13. I then noticed Kelso was out of the police unit and was trying to say something to me but I could not hear her. An officer then hand signaled for me to come toward him. I was then told that Coach Bibbs, Kelso and I were under arrest and to put my hands behind my back. I complied and was handcuffed and placed in a separate patrol unit.

14. While sitting in the patrol unit, I could see an unmarked police car as well as the marked units that Coach Bibbs and Kelso were in. I could see several officers looking into the windows of our rental van.

15. I saw Assistant Coach Walter Mebane talking to Coach Bibbs while she was sitting in the patrol unit. Suddenly, I heard a loud blast and saw the officers reach for their firearms. I then noticed that the tire on the unmarked police car had blown out. I then looked to my right and saw Kelso moving in a very erratic manner. I knew something was wrong with her. I tried to get the attention of the officers, but the windows in the unit were up and no one could hear me. After approximately ten (10) minutes, I saw an officer looking at her. I then noticed Kelso bend over inside the car.

16. Later I noticed Kelso exit the patrol car with her hands cuffed behind her. I then saw her vomiting

profusely. Two paramedics arrived and stood near Kelso and appeared to be talking to her. Then one of the police officers and the paramedics started to discuss something among themselves. At no time did I observe the paramedics or police assist Kelso while she was vomiting. Everyone stood and watched her. Eventually an ambulance arrived and took Kelso to the hospital.

17. I noticed several police officers conducting a search of the inside of the van. As I watched the officers search the inside of the van, Coach Mebane came up to the police unit that I was in. I asked Mebane to stay very close to the van. He agreed.

18. An officer then opened the car door and told me that I was being transferred to the patrol car with Coach Bibbs. I was placed in the unit with my wife. At this point, I still had no idea why we were being arrested. I was never read any rights. We were then transported to the city jail.

19. Once we arrived at the city jail, we were denied access to the restroom and refused water. We were then booked and asked a series of questions, fingerprinted and photographed. Coach Bibbs was allowed to make a phone call and she attempted to reach Coach Mebane to advise him of the situation, but was not able to contact him. We later discovered that Coach Mebane and Attorney Bill Wischkaemper were at the jail, but were not allowed to see us.

20. Coach Bibbs and I were placed in separate cells. I was placed in a cold, filthy cell with metal beds, no bed linen and a commode full of urine and bowel. After being in the cell for approximately 50 minutes, Detective Overland came to the cell and asked me if he could ask me some questions to clear up some confusion. I had still not been advised of my rights. I asked him what had we been arrested for. For the

first time, I received a response. Detective Overland asked if I knew what a "pigeon drop" was. I responded "no, please explain it to me." He then stated that there was a victim of an attempted "pigeon drop" who had identified Kelso as one of the perpetrators. He told me what a pigeon drop was and I stated that we had not done anything wrong. He proceeded to ask me questions that I thought were not appropriate to answer without first talking to an attorney. I refused to answer any of his questions without an attorney being present. Detective Overland left the cell.

21. A few minutes after Detective Overland left the cell, I was led back to the booking area where additional fingerprints were taken of me. Only my thumbs were printed the first time. The officer was about to return me to the cell when someone came in and whispered something to another officer. I was then told that I was being released.

22. I was told that I had to sign some release papers. I asked what the charges were and was told for the first time that I was being charged with Attempted Felony Theft. At this point, Coach Bibbs was brought into the room where I was located. Coach Bibbs and I reviewed documents that we were asked to sign. After retrieving all of my personal items, I signed the releases.

23. An officer then stated that he needed to speak to us. We were led into an office where there were two plain clothes officers. The officers introduced themselves and stated that we were being released pending the victim filing charges.

24. Coach Bibbs asked the officer if we were charged with Attempted Felony Theft. The officer responded that we had not been formally charged and no information would be given to the media. I asked the

officer about Channel 13, because we had noticed this news station with its cameras pointing at us while we were detained and handcuffed in the police units in the parking lot of the Holiday Inn. The Public Relations Officer indicated that they had not been contacted by any news media regarding this incident and he had not seen anything on television. He indicated that his office would not comment on this matter, but he could not control rumors.

25. The Public Relations Officer then asked for our permission to search the van. This surprised us because we had already observed several police officers search the van when we were in the parking lot of the Holiday Inn. Coach Bibbs and I indicated that we were not going to do anything until we consulted an attorney. The officer then stated that he would seek a court order.

26. An individual entered the room and indicated that an attorney and member of Coach Bibbs' staff were waiting for us. We were led to a waiting area where we were greeted by Coach Mebane and Attorney Bill Wischkaemper.

27. Attorney Wischkaemper, Coach Mebane, Coach Bibbs and I left in Wischkaemper's vehicle and traveled to his office. We then made contact with Dr. Dennis Thomas, the Athletic's Director for Hampton University.

28. Attorney Wischkaemper, Coach Mebane, Coach Bibbs and I traveled back to the police station to await Kelso's arrival from the hospital. Wischkaemper and Mebane proceeded inside the station, while Coach Bibbs and I waited in the vehicle.

29. From the vehicle, we could see inside the police station. We observed Coach Mebane and the mayor

of Lubbock, Mayor Wendy Sitton, sitting next to each other. We also saw several officers standing outside. They seemed to be involved in a hardy conversation. We noticed that one of the officers were involved in our arrest.

30. We observed a patrol car carrying Coach Kelso arrive at the police station. After approximately 45 minutes, Kelso, Attorney Wischkaemper and Coach Mebane returned to the vehicle Coach Bibbs and I were in.

31. Attorney Wischkaemper informed us that the police were in the process of getting a court order to search the van. He asked if either of us had any objections to giving permission for the van to be searched. He also asked if there was anything in the van that would be a problem to us. We all stated that there was nothing illegal in the van and we granted permission for the van to be searched. Wischkaemper stated that he would give permission to search the van only if he could be present. His request was granted.

32. Later, Wischkaemper and several police officers came to the vehicle with our personal belongings and our bags of items purchased at Wal-Mart. We placed the items in Wischkaemper's vehicle and departed for the hotel.

33. In route to the hotel, Attorney Wischkaemper stated that the officers did not find anything in the van. He indicated that they seemed to be looking for a 3x5 card.

34. At approximately 12:40 a.m., we arrived at the Holiday Inn. Coach Mebane and Attorney Wischkaemper left to pick up the rental van. Coach Bibbs and I proceeded to our hotel room and Kelso joined us. We then contacted Dr. Dennis Thomas.

35. It is my opinion, that race played a large role in our arrest on November 16, 1998. I was never implicated by anyone as being a part of this alleged crime. Despite this fact, I was arrested. Coach Bibbs and I were wearing blue Hampton University Lady Pirates warm-ups with Hampton insignia on the left side of the chest. Coach Bibbs repeatedly informed Officers Jobe and Houser that she was the Head Women's Basketball Coach at Hampton University and that we were in Lubbock to play Texas Tech and were staying at the Holiday Inn with the team. She had asked officer Houser to call her friend Coach Marsha Sharp, the coach for the Texas Tech Lady Raiders. The officers would not listen to her. We were continuously accused of having false driver's licenses. I was shocked and mortified to see that no uniformed officer offered any assistance to Kelso while she profusely vomited in the parking lot.

36. While inside Wal-Mart, Coach Bibbs and I noticed that we were the only African-American patrons. On November 16, 1998, we were identified by race only by the Lubbock Police Department.

/s/ Ezil Bibbs Date: 9/22/99
Affiant

SUBSCRIBED AND SWORN TO before me a Notary Public in and for the State of Virginia on this 22nd day of September 1999.

/s/ [Illegible] Hart
NOTARY PUBLIC

My commission expires: June 30, 2003